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## **'Chief's Disease' rife at CHP**

### **Strong pursuit of injury claims boosts top officers' retirement benefits.**

**By John Hill and Dorothy Korber -- Bee Staff Writers - (*Published September 10, 2004*)**

After 33 years on the job, Deputy Commissioner Ed Gomez was ready to end his career with the California Highway Patrol. He was so disabled by workplace stress and physical ailments, his doctor said, that he could no longer work as a CHP commander.

The doctor's report said Gomez must "avoid more than ordinary stress in further occupational endeavors." In 2000, the 57-year-old was awarded a \$39,000 settlement, medical care for life for his injuries, and a state industrial disability pension of \$106,968 a year - half tax-free.

Barely two years later, Gomez was hired by the federal government to be security director at San Francisco International Airport, a position described as "on the front lines of the war on terrorism." It's a job he holds today.

Gomez is a prime example of a widespread practice documented by a Bee investigation: top-tier CHP officers aggressively pursuing injury claims, often near the end of 30-year careers, that hike their retirement income. Like Gomez, some go on to demanding second careers while collecting their state disability pensions.

Inside the CHP it's known as "Chief's Disease."

Of 65 high-ranking CHP officers who have retired since 2000, 55 pursued workers' compensation settlements within two years of retiring. These injury claims formed the basis for disability settlements and medical pensions.

Rank-and-file officers complain that this behavior among many of the 150 or so chiefs and captains at the top sets a bad example for the 7,000 officers they supervise, in a department that pays the highest rate in state government for injuries and medical pensions.

The practice is so well known at the CHP that many officers can name the handful of chiefs who retire without medical pensions or workers' compensation claims. They stand out because they are unusual.

Far more common are cases of Chief's Disease, such as the captain hurt in an accident in her private car who successfully claimed the collision occurred on the job.

Or the deputy chief who suffered episodes of racing heart described by a doctor as a danger to the public, and skin cancer attributed to years of patrolling the highways, who found a new career as a scuba instructor in sun-soaked Hawaii.

Or the captain found to be 61 percent disabled from knee injuries, ulcers, high blood pressure and hearing loss who took a medical pension from the CHP only to sign on as assistant sheriff of

Yolo County.

In most cases, the disability benefits augmented the ample pensions routinely paid to CHP officers, who can retire at age 50 with up to 90 percent of their pay.

## Hard to stop claims

State Sen. Jackie Speier, a Bay Area Democrat who chairs the Select Committee on Government Oversight, said she was shocked by The Bee's findings.

"This data is just staggering," Speier said. "My expectation of law enforcement officers is that they are above reproach. The data suggests that is not the case. It turns out we need to be policing the police."

Even the CHP's top boss said it had gone too far - just weeks before he decided to go the same route.

"Some of these people have pushed the envelope on this and it's just grown and grown and grown," CHP Commissioner D.O. "Spike" Helmick said during a June interview in his capital office. "The system is so lucrative, I'm afraid people are going to take advantage even if they're 100 percent ethical."

In July, Helmick filed the papers to seek his own medical pension. The commissioner, who retires next week, has made five injury claims in the past three years, including one based on a fall from his office chair in 2000.

Absent outright fraud, it can be hard to rein in the aggressive use of the disability system, according to administrators and lawyers who work within it.

For one thing, they suggest, a worker unable to handle the stress in one job might still thrive in another career - even an apparently stressful one.

"It's how you perceive it," said Herman Zayon, a Northridge lawyer who has represented CHP officers in workers' compensation claims. "That's why it's difficult to talk about this on a generalized basis."

Gomez, for instance, draws a clear distinction between the CHP job he held for 33 years and his new endeavor.

"This is strictly administrative," he said of the airport job. "I am not a law enforcement officer. ... My job is to deal with politicians, the airport director, Washington and the police."

Still, despite the opinion of two doctors that he should avoid stress, Gomez conceded his new role guarding against terrorist attacks has plenty of it. In a profile published in the San Francisco Chronicle two years ago, he said his new job kept him awake nights, even after 16-hour days.

"Every time a plane takes off here, I'm scared to death," he told The Bee.

Gomez was thoroughly checked out before he was offered the position, according to Nico Melendez of the Transportation Security Administration, the federal agency that hired him. Melendez declined to comment on Gomez's medical condition.

"To secure a job such as this, you have to meet the highest standards," he said. "We want to

know their complete work history. Medical records are something else. Are you asking if we discriminate against someone with a disability? We do not."

San Francisco International Airport is in Sen. Speier's district. Asked about the Gomez case, she said: "If someone has a miraculous recovery, then they're not eligible for a lifetime tax break. It's an insult to the taxpayers of the state that they continue to draw a disability pension if they're not disabled."

## **CHP tops disability list**

The CHP has the highest rate of disability retirements in the state - nearly 70 percent of its retirees. And among large departments, it pays out the highest portion of payroll for workplace injury claims. Together, these benefits cost taxpayers about \$75 million in the 2002-03 fiscal year.

A high rate of injuries is understandable in a department with the primary role of patrolling the state's highways and protecting the public. Officers can be hurt in car crashes or confrontations with criminals.

"I would rather not have a titanium hip and be able to say I don't need an industrial disability retirement," said Garand Gruber, a deputy chief who retired in 2002 after being told he needed a hip operation to deal with the effects of motorcycle accidents.

But The Bee found that many workplace injuries to top CHP officers did not stem from violence or traffic accidents.

Instead, workers' compensation records show, the chiefs claimed they suffered from the cumulative wear and tear of the job - even though in recent years they spent more time behind a desk than behind a wheel.

Several pursued disability claims only when faced with disciplinary actions or other career setbacks.

After winning workers' comp settlements and medical pensions, many top CHP officers went on to other jobs, some of which seem at odds with the disabilities for which they filed claims with the state.

## **Claims rolled into one**

The Bee's analysis found that more than 80 percent of the top officers who retired in the past four years claimed they had suffered a debilitating injury just as they were poised to retire.

CHP officers classified as injured typically get settlements of tens of thousands of dollars to compensate them for their loss of competitiveness in the job market. These settlements regularly include lifetime medical treatment for injuries - no co-payments or deductibles - and a full array of care.

"You can't buy that anywhere else," said Barry Pearlman, president of the California Workers' Compensation Defense Attorneys' Association, whose members represent employers in injury claims.

But that's not all. Injured officers can get up to a year of full pay, tax-free, while temporarily disabled. Their workers' compensation cases also often form the basis of a medical pension that allows them to shelter half of their regular pension from income taxes. So, for veteran officers,

a medical pension can mean more money in their pockets than when they were working.

If their injuries had forced them to leave the CHP before the retirement age of 50, they would have been left with only half their salary.

In many cases, the injuries claimed in these cases originated years earlier - hearing was damaged, for instance, when officers fired guns at target practice without adequate ear protection.

Another common claim is "cumulative trauma" - a host of maladies that build up gradually.

Workers' compensation lawyers advise clients approaching retirement to roll a lifetime of complaints into one disability settlement, "so you can ride off into the sunset," said Frank Floyd, state contracts program manager for the State Compensation Insurance Fund, which acts as the state's claims adjuster.

The CHP officers involved often suffered from maladies common among people of retirement age: bad backs and knees, heart trouble, loss of hearing. "What the Legislature and the courts have said is that the aging process is compensable," Floyd said.

## **System favors workers**

Absent outright fraud - lying to get a benefit - it can be very difficult to block such claims, Floyd said, especially in a system that by law must take a liberal approach to granting workers' comp benefits. The state's "no fault" workers' comp system was designed to give the benefit of the doubt to injured workers, in return for workers giving up the ability to pursue civil lawsuits.

CHP chiefs do know the system well, having administered it. But they also are as subject to injuries from stress as the officers who patrol the roads, said Zayon, the workers' comp lawyer.

While it may look suspicious for officers to claim injuries just as they approach retirement, he said, there's a reasonable explanation: Officers minimize their injuries when they're young.

"They don't complain, they do what they have to do, because they don't want to leave their jobs," Zayon said. "Maybe that catches up to them when they're older. They're claiming when they retire what they should have got at a younger age."

In its examination of cases, The Bee analyzed hundreds of pages of medical records submitted to the Workers' Compensation Appeals Board, which must review all settlements and rule on disputed cases. Many of the cases examined by The Bee, filed in state offices from Redding to San Diego, consist of voluminous reports from multiple doctors, often with conflicting opinions about each worker's injuries.

Sometimes, workers were found permanently disabled because they could no longer perform 14 critical tasks demonstrating physical fitness. Even CHP chiefs, whose jobs are mostly administrative, must pass that test.

Every CHP officer, for instance, must be capable of extracting a 200-pound victim from a car and dragging that victim 50 feet.

High-level officers defend those requirements. Even though they don't spend much time on the highways, they say, they still carry guns, wear uniforms and are expected to act when needed.

"What do you tell the lady who's getting mugged?" asked Gruber, the retired deputy chief with



the hip replacement. "You're not dispatched to those sorts of things, but just being in the vicinity, you don't roll by them and let a younger guy do it."

State law also prohibits the CHP from assigning officers unable to perform the 14 tasks to "light duty" assignments.

As a result, many CHP officers considered disabled under the state's definition are indeed capable of taking jobs elsewhere. But, in some cases, the new duties conflict with what doctors and the officers said in their injury claims.

## **Doctors disagree**

Ed Gomez, chief of the CHP's Southern Division, left work in April 2000 after his doctor found he was suffering from job stress. He pursued a workers' compensation settlement and an industrial disability retirement, which he received in August of that year.

(The California Public Employees' Retirement System will not release information on such claims, citing medical confidentiality. That makes it impossible to determine whether injuries cited in workers' comp claims were also the basis for the medical pension - although state retirement system officials acknowledged that is often the case.)

Workers' comp records show that doctors disagreed about the nature and severity of Gomez's injuries.

Gomez produced a doctor's report saying he should avoid workplace situations that could trigger nervousness, irritability or tension, such as the need to meet deadlines or focus on detail under distracting conditions.

The Encino physician consulted by Gomez reported that the patient, in his 33 years at the CHP, had found himself in many stressful situations. He responded to the news media and the officers union, doled out discipline and dealt with shootings and injuries of his officers - visiting hospitalized workers about once a week.

He was in charge of all of Los Angeles County, a gigantic swath of rugged territory for the highway patrol, stretching from Sylmar to Santa Monica. During the 1994 Northridge earthquake, the report said, Gomez was up for three days straight.

But another physician, hired by the State Compensation Insurance Fund to determine if Gomez's injuries arose from his work, raised questions about whether he suffered from high blood pressure and found he did not have the gastrointestinal illness he claimed.

"Mr. Gomez is a 57-year-old who apparently has decided to retire and now every possible medical condition is being claimed as work-related," wrote Dr. Richard Hyman, a Los Angeles specialist in internal medicine and cardiovascular disease. Hyman declined to comment on the case, saying he was constrained by medical confidentiality.

A third doctor, also hired by the insurance fund, sided with the first, finding that Gomez suffered from a permanent disability "precluding exposure to undue emotional stress."

Together, his various injuries were found to have caused a 45 percent disability, permanently limiting the kind of work he could do and reducing his ability to compete in the labor market.

By that time, Gomez already had been working for a year and a half as a vice president of a private security company.

A month later, he was appointed by the Transportation Security Administration to fill the new position of federal security director at the San Francisco airport. The position was created by Congress after the Sept. 11, 2001, terrorist attacks to "be the security field marshals at airports across the country."

Gomez said in an interview that his hearing loss and knee problems made it impossible for him to continue at the CHP. He said he pursued the workers' compensation claim after he retired to establish that his ailments were work-related, a guarantee that his medical bills would be covered in later years.

He said he took a pay cut - and gave up perks like an expense account and bonuses - because he wanted to help make air travel more secure, despite the stress.

"If it wasn't for the war on terrorism, I wouldn't be here," he said.

## **Battles with the bosses**

Stress was one reason Deputy Chief Kevin Mince sought a workers' comp settlement - stress resulting from what he described as a long-term conflict with his supervisor. Documents show Mince claimed to have run afoul of CHP top management when he declined a transfer out of Sacramento.

According to a medical report filed in the Oakland Workers' Compensation Appeals Board office, Mince said he decided "if they're going to force me to retire, I was going to explore disability retirement."

One doctor found that Mince had had four episodes of a racing heart, leaving him lightheaded. If that were to happen while he was making an arrest or pursuing a suspect, the doctor wrote, Mince "would be at risk not only as far as he is concerned but the general public as well."

Mince, who had told one physician that he never took a day of sick leave, was found to be 23 percent disabled as the result of headaches, shingles, chest pains and injuries to his psyche. He received a payment of \$13,680 and a guarantee of future medical treatment. In a separate settlement, he was guaranteed future care for skin cancer after the doctor said his job exposed him "to an excessive amount of sun."

In June 2003, Mince retired with a medical pension. He has since found a job teaching scuba diving at Fathom Five/Ocean Quest in Kauai, Hawaii.

"Being a cop has given Kevin an incredible amount of patience and understanding," according to the dive shop's Web site. "Also, if you ever got a ticket from the CHP, this might be the time for revenge."

Mince did not return several phone calls to his home in Hawaii.

New job, same field

Unlike Mince, Larry Hollingsworth, 62, didn't have to begin a whole different career after he retired as a CHP captain. He found work with another law enforcement agency, as an assistant sheriff in Yolo County.

Hollingsworth's 33-year stint with the CHP started winding to a close in 2000. He made a workers' comp claim, saying that the cumulative trauma of the job had caused injuries to his knees, back, hearing and heart, and had led to ulcers and skin cancer.

Again, doctors disagreed about the nature and cause of the injuries. One found no evidence of a work trigger for his back injuries, beyond a motorcycle accident for which he had already received a settlement.

"His job duties over the past several years have been essentially sedentary, other than getting in and out of a patrol car," that physician wrote.

But that September, Hollingsworth twisted his knee chasing a car theft suspect after he answered a call for aid from a patrol officer. At the time, he was meeting with the sheriff of Merced County to talk about setting up a methamphetamine task force.

"I'm in a Hawaiian shirt and Dockers, but I went after him," Hollingsworth said in an interview. "I caught him, but I blew out my knee."

In March 2002, he received an industrial disability pension, shielding half of his annual pension of \$87,276 from taxes.

It took a while for his workers' comp claim to be settled, but in 2003, he was found 61 percent disabled and awarded \$60,222 for knee injuries, ulcers, high blood pressure and hearing loss. The settlement covered future medical treatment for the injuries.

Hollingsworth deserved that amount, the workers' compensation board found, in part because his disabilities would prevent him in future occupations from being able to sit, stand or walk for prolonged periods.

By the time the board ruled, Hollingsworth had accepted an offer from Yolo County Sheriff Ed Prieto, a fellow CHP retiree, to work as his assistant sheriff.

State law limited Hollingsworth to working half time for another government agency. So he worked six months for Yolo County in 2002 and again in 2003.

This year, he sidestepped that limitation by forming a private company and contracting his services to Yolo for \$85,000 annually. After he was contacted by The Bee for this report, Hollingsworth sent a letter to CalPERS asking for a determination about the propriety of the arrangement. In early August, CalPERS replied that it did not comply with state retirement law. Hollingsworth has until Sunday to appeal that decision, and said in an interview that he had gone back to working half time until the issue was resolved.

Like Gomez, Hollingsworth draws a clear line between what he did at the CHP and his current job, which he also calls "strictly administrative." He's responsible for the county jail, internal affairs, personnel and training.

"I love this work," he said of his CHP career. "I didn't want to go. But the physical side of it - that's for the young pups."

Injury work-related?

Denise Daeley, 42, was a younger worker who could no longer handle the physical aspects of the job.

Her career with the CHP came to an abrupt end in April 2000 when she injured her back in a car accident north of Anaheim. Daeley, a captain at the time, was returning from a weekend running race in Las Vegas, the Baker to Vegas Challenge Cup Relay, limited to law enforcement officers.

Daeley was a passenger in her private car, driven by another CHP officer who attended the race, Sgt. Kerri Hawkins. Also in the car were Hawkins' mother and a 12-year-old girl, according to the accident report.

A truck jackknifed in the rain and veered into oncoming traffic, striking another vehicle, which in turn spun into Daeley's car. Daeley and the two other adult passengers reported various injuries, but all three refused medical treatment at the scene, saying they would get it on their own.

Daeley did not receive advance permission from the CHP to attend the event, as required. After she filed her claim, Commissioner Helmick raised questions and an inquiry began.

That internal inquiry found that the CHP, while allowing officers to try out for the team on state time, made it clear that the officers would have to pay their own way to attend the run. "All preliminary indications were that this accident was not job-related," according to the inquiry report.

But it went on to say that Daeley had participated in CHP recruiting efforts during the weekend. The report also mentioned that, during the weekend, Daeley met with a CHP investigator to talk about a case.

The report concluded that the CHP should not oppose the claim, leaving it up to the State Compensation Insurance Fund, the state's adjustor, to decide if the accident was connected to work.

"I had a lot of questions about the case and asked for a whole lot of research," Helmick said.

Floyd, the insurance fund program manager, would not comment on individual claims. But he said that case law has established that workers are on the job if they're doing something that benefits the employer, even if the activity wasn't approved beforehand.

"Would we argue it? Absolutely," Floyd said. "Would we win? Probably not. The body of case law, it overwhelms you."

In 2003, Daeley gained a medical pension, entitling her to half her salary, tax-free, for life. For Daeley, who had received a scheduled promotion to assistant chief a few months after the accident, that added up to an annual allowance of \$57,396.

Daeley did not respond to phone calls The Bee made to her new home in Kauai, Hawaii.

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## Workers Compensation and Related News

This is a collection of news articles on topics related to Workers' Compensation and the California Highway Patrol. It covers the current year and primarily is based on local news coverage in the Sacramento Bee.

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**Pension jackpot -- Many more winning safety-worker label**By John Hill and Dorothy Korber -- Bee Staff Writers - (*Published May 9, 2004*)

First of two parts

Prison cooks, plumbers, groundskeepers, teachers, dentists, business managers, and "audiovisual specialists" - all are among the 70,000 state workers considered police or firefighters, eligible to retire with better benefits than other state workers.

In fact, any worker in a California prison regularly in contact with inmates is considered a police officer, rewarded with a richer public pension for helping safeguard society.

The same goes for workers in state mental hospitals - from psychiatrists to podiatrists - who supervise patients. And, in July, a whole new crop will get these public-safety retirements, from driving examiners at the Department of Motor Vehicles to inspectors of milk, livestock and funeral homes.

In the 1960s, only about one in 20 state workers received enhanced retirements for their role in keeping the peace. Today, it's close to one in three. The state paid out \$587 million for the public safety categories in 2001-02, the most recent year statistics are available. That's nearly as much as it paid that year for the 230,000 workers not involved in public safety.

Originally, the rationale for offering earlier retirements to police officers and firefighters - "gun-toters and hose-pullers" - was that their jobs required them to be young and fit. But a Bee investigation found that public policy has been distorted almost beyond recognition.

One of the first groups added to the public-safety rolls in the 1970s was prison workers who didn't carry guns but did come into regular contact with inmates. They were workers such as Brian Coughran, a plumber at California State Prison, Sacramento.

Coughran oversees inmates who help maintain a vast sewage and water system constantly under siege from breakdowns and vandalism. He defends his eligibility for a better pension.

"Every moment you're inside the wire here, something can happen - everything from actually being attacked to catching a ricochet," Coughran said. "Sometimes I think the violent things are better than the diseases you can catch working in an environment where people have not historically taken care of themselves."

It's true that in seven years on the job, Coughran never has been attacked. But, he said, "when things go down, all staff are targets."

Prison plumbers were on the cusp of a decades-long trend, The Bee found in its examination of 30 years of data from the state's retirement system, documents from legislative archives and former Gov. Gray Davis' recently released papers. The investigation also relied on an electronic database of state workers and classifications, court cases, and records of campaign contributions.

Growth in public-safety pensions has created a class of state workers who can look forward to retirements far more secure than the private-sector norm. They're even better than the pensions of other California state workers - already among the most generous in the nation.

"It has reached far beyond the levels of benefits received by others in our society," said Larry McCarthy, president of the California Taxpayers' Association, an anti-tax group that opposes the growth in public-safety pensions.

Over the years, the special retirement category has extended up the supervisory chain, too, allowing workers to accept promotions without giving up their better pension. Today, the category includes more than 1,000 state workers who earn more than \$100,000 a year, including supervisors, physicians and psychiatrists.

Those well-paid workers can look forward to bigger pensions, too. A chief medical officer at a prison who makes \$140,300 a year, for instance, gets an annual pension equal to \$3,500 multiplied by every year he or she has worked.

A series of studies in the 1960s and '70s recommended that the sole criterion for offering better pensions should be encouraging early retirement from positions where workers need to be young and fit to safeguard the public. If the rationale were simply risk, one study found, sewage workers in Los Angeles and state highway maintenance workers would have a stronger claim to special retirements than public-safety workers.

But the Legislature added classifications to the special pension class for reasons other than physical fitness:

The jobs were risky or stressful. The state needed better pensions to recruit and retain qualified employees. Some argued that fairness was at stake - why should they have to toil alongside colleagues who got better retirement benefits? One union complained that splitting its membership between those who got public-safety pensions and those who didn't was creating disharmony.

"Many people have gotten in on the gravy train," said Steven Frates, senior fellow at the Rose Institute of State and Local Government at Claremont McKenna College. The current list, he scoffed, includes "anybody remotely associated with public safety, if they're not totally asleep."

Despite the original purpose - fitness - many of those entitled to special pensions are not required to pass fitness tests to get or keep their jobs. The state discontinued fitness tests of California Highway Patrol officers because the test itself was generating too many workers' compensation claims from those who injured themselves preparing for it or taking it.

## Enhanced retirement: A growing club

Starting in the 1970s, the state has greatly expanded the numbers of state workers who get better pensions because they are involved in public safety. At the same time, the state prison system grew, requiring the state to hire more workers in the existing public-safety

categories. The categories include everyone from patrol officers, who at age 50 can get an enhanced pension, to prison typists who get the same pension formula as ordinary state workers but qualify for a special disability benefit available only to public-safety workers.

As a percentage of the state work force, the public-safety retirees grew from about one in 20 to one in three.

**1932:**

- Legislature establishes a retirement system with no differentiation of classes.

**1935:**

- A separate category, with enhanced benefits, is established for the Highway Patrol.

**1947:**

- Firefighters and fish and game wardens are added to the special class.

**1971:**

- Prison guards are put into the enhanced retirement category, which a year later is classified as "state safety."

**1976:**

- Teachers, vocational instructors, custodians, groundskeepers, farm supervisors, medical technical assistants, mechanical and construction workers and others in the prisons are given safety status, a total of 1,942.

**1978:**

- Various other blue-collar jobs in the prisons are added to safety classification, including machinists, plumbers, laborers, and the "bedding factory supervisor."

**1984:**

- As the result of collective bargaining, the Legislature creates an even better "super-safety" category for the original recipients of enhanced pensions, such as CHP officers, prison guards and firefighters. Also in the "Peace Officer/Firefighter" class are investigators in various departments. The total cost of the program is estimated at \$280 million. An estimated 16,463 workers are eligible for the new category.

**1988:**

- As a result of collective bargaining, the Legislature extends safety retirement benefits to workers in Department of Mental Health hospitals that handle large numbers of patients referred by courts. This includes 2,632 rank-and-file workers and 61 managers and supervisors. Registered nurses are covered by a bill the following year.

**1991:**

- The Legislature adds 21 new classifications to the safety retirement category, including business managers, industrial superintendents, property controllers and plant managers.

**1993:**

- The Legislature extends better pensions to more prison classifications, including dentists, lab techs, hospital aides, psychiatric social workers, registered nurses and health services administrators. In all, 62 new job classifications are added, bringing 1,440 new workers under the safety rubric.

**1998:**

- The state negotiates a contract with the union representing dentists, doctors, psychiatrists, psychologists, social workers, and speech pathologists — a total of 730 workers in the departments of mental health and developmental disabilities — that extends them the safety retirement benefits. This bill and others give the Department of Personnel Administration the authority to bring people into this class without added legislation.

- A report by the Department of Personnel Administration on safety designation finds that the application of safety retirement classes "has been considerably broadened over the last 20 years," with unions pressuring the state to add more. The report found that there were few efforts to assure that safety employees remained fit enough for the job, the original rationale for creating the enhanced retirement.

- Napa and Metropolitan Los Angeles County state mental hospitals are declared "forensic" — meaning more than half their workers were referred by courts, making workers there eligible for safety retirement.

**1999:**

- SB 400 increases the retirement formula for all categories of state workers.

**2002:**

- The Legislature approves a bill to give better pensions to about 3,200 more state workers, including Department of Motor Vehicles workers who give driving tests, CHP dispatchers, livestock inspectors, funeral home inspectors, fingerprint analysts and many more. This takes effect in July 2004.

## State retirement system classes

**Miscellaneous, Tier 1 (such as transportation engineer, typist, program analyst):**

- At age 55: Annual pension equal to 2 percent of salary multiplied by the number of years served, with no limit.
- Most pay 6.2 percent of their paycheck into the Social Security system and another 5 percent past a certain point to CalPERS.

**Industrial, Tier 1 (such as prison typist, prison records analyst, prison program analyst):**

- At age 55: Annual pension equal to 2 percent of salary multiplied by the number of years served, with no limit.
- Most pay 6.2 percent of their paycheck into the Social Security system and another 5 percent past a certain point to CalPERS.
- Disability and special death benefits.

**Safety (such as psychiatric technician in prisons and state hospitals, registered nurse in prisons and state hospitals, prison cooks):**

- At age 55: Annual pension equal to 2.5 percent of salary multiplied by the number of years served, with a cap of 80 percent of final compensation.

- 6 percent of paycheck past a certain point to CalPERS.
- No Social Security payments
- Disability and special death benefits.

**Peace Officer/Firefighter (such as correctional officer, parole agent, fire captain):**

- At age 50 or 55 (most are scheduled to get it at 50): Annual pension equal to 3 percent of salary multiplied by the number of years served, with a cap of 90 percent of final compensation.
- 8 percent of paycheck past a certain point to CalPERS.
- No Social Security payments
- Disability and special death benefits.

**California Highway Patrol (such as officers, sergeants, lieutenants):**

- At age 50: Annual pension equal to 3 percent of salary multiplied by the number of years served, capped at 90 percent.
- 8 percent of paycheck past a certain point to CalPERS
- No Social Security payments
- Disability and special death benefits.

## Other state jobs soon to get enhanced retirement status

On July 1, about 3,200 state workers will qualify for "safety" retirement, the latest to join a club that has more than tripled in the past 20 years. The original intent of the enhanced pensions was to encourage earlier retirement and guarantee that public safety workers were young and fit. Among the classifications to be added in July are:

- **Public safety dispatcher, CHP:** Gets reports of accidents and other incidents and transmits them to patrol officers; deals with other calls and operates communications equipment (689 workers as of April)

- **Licensing-registration examiner:** Gives driver tests and deals with the public at DMV offices (579 workers as of April)

- **Brand inspector:** Performs and supervises inspection of livestock for brands at stockyards, shipping points, ranches and slaughterhouses;

oversees livestock transactions. Also helps in investigations of thefts and strays. (46 workers)

- **Managing deputy commissioner:** Plans operations and oversees work in the Department of Real Estate. (26 workers)

- **Measurement standards specialist:** Tests weighing and measuring devices to make sure they comply with laws and regulations. (20 workers)

- **Litigation specialist, California Department of Transportation:** Gathers information and conducts interviews in preparation for Caltrans lawsuits and hearings (113 workers)

- **Photo-electronics specialist, Department of Justice:** Installs and maintains electronic and photographic equipment, and trains workers how to use surveillance devices (4 workers)



The Legislature's initial goal was to encourage safety workers to retire younger by granting higher credits for each year served and lowering the minimum retirement age. In the CHP, for instance, officers get 3 percent of their annual pay for each year of service at age 50, instead of the 2 percent at age 55 available to most state workers.

For pensioners, the difference is considerable - "3 percent at 50" means people with 30 years on the job can get 90 percent of their pay annually if they retire at age 50. But, under "2 percent at 55," 30-year veterans would get just 60 percent of their pay at age 55.

The sweeter pension, however, does not seem to lead safety workers to retire at significantly younger ages.

Workers in the two largest special pension categories leave state service just one to three years earlier than run-of-the-mill state workers, according to data from the California Public Employees' Retirement System. In the fastest-growing public-safety category - known simply as "safety" - workers enter state service seven years older than average, seemingly contradicting the notion that the jobs require younger workers.

The Legislature undermined its own policy. It started off by capping the percentage of salary that workers could receive in retirement, removing the incentive for staying on the job. But it has repeatedly raised that cap - to 90 percent for the peace officer/firefighter category.

For some of the safety classifications, the state has even agreed to "longevity pay" to retain long-time workers.

Public employee unions, a potent political force because of big campaign contributions, have pushed relentlessly to bring more workers into the public-safety retirement group.

The California Union of Safety Employees, which represents a wide array of workers from hospital police to litigation specialists at the state Department of Transportation, gave more than \$500,000 to former Gov. Gray Davis around the time that a bill made its way to his desk that gave the union's members safety retirements. One former union official is blunt about the intent.

"All of this was the result of buying Gray Davis," said Sam McCall, then a union lawyer who helped write and negotiate the bill, SB 183. "We would not have got this done if we had not shoved a lot of money his way."

Marty Morgenstern, director of the Department of Personnel Administration under Davis, said it became clear that the union "felt first of all that they were legitimately entitled to it, and secondly that the unit was being torn apart by this issue."

Davis signed the bill. Through a spokesman, he declined to be interviewed for this story.

There were perceived benefits to the state in adding members to the public safety category. During tough fiscal times, improving pensions was a way to keep workers happy without adding to the deficit.

Lawmakers and officials often argued that there would be no cost at all. Gov. Jerry Brown cited the "net savings" to the state when he allowed the 1976 bill covering prison workers to become law without his signature.

The basis of that and subsequent claims is that the state no longer has to pay 6.2 percent of payroll into the Social Security system for workers declared "police."

The state does have to pay a higher-than-normal percentage of payroll to CalPERS for those workers. But when the added amount is less than the Social Security payment would have been, the state saves money.

For the fastest-growing special retirement class, the category known simply as "safety," however, the CalPERS contribution has exceeded the Social Security savings in each of the last five years.

As the state struggles with a fiscal crisis, this "money-saver" has become an additional burden. In the 2002-03 fiscal year, for instance, the state had to pay 3.5 percent more for every worker in the safety category - totaling roughly \$30 million more than it paid for the same number of workers in the ordinary state retirement category.

The public-safety status bestows more than a richer pension formula. Workers qualify for industrial-disability retirements. If they're injured on the job, they can retire with half of their pay, tax-free. They also get death benefits not available to other state workers.

Although the public-safety workers stop accumulating Social Security credit, some still are eligible to get the federal retirement benefits for the years they paid into the program. Also, after moving into public safety, they get to take home the portion of their paychecks that used to go to Social Security.

Most would agree that these workers provide a valuable service to the state, often under demanding conditions.

James Young, a psychiatrist at Napa State Hospital, points out a faint scar on his forehead, a memento of when a patient suddenly scratched at his eyes.

At Napa, as at all state mental hospitals, public-safety categories include not just psychiatric technicians and nurses responsible for handling patients, but also psychiatrists, social workers, dentists and podiatrists.

Napa State Hospital workers practice dealing with inmate assaults by wrestling their instructor, Beverly Cooley, to the mat. Many jobs at mental hospitals are in the state's public-safety category.

As Napa State Hospital employees practice escaping from dangerous situations, Christine Pachica, center, tries to break the hold of partner Marie Eustache. Workers there tell of violent episodes and say they must constantly be wary of patients.

To Young, being eligible for a safety retirement "is an acknowledgment that it is a potentially dangerous job. No matter how you slice it, there's a chance you're going to get hurt."

But Young also illustrates how the policy has strayed from the purpose of encouraging early retirement. At 53, he has no intention of retiring in two years, as his employment category allows.

"I've got a mortgage and a kid to put through school, so unless I win the lottery, it's not going to happen," he said.

And it's unclear why the state would want to encourage early departures among professionals like Young whose performance may improve with experience.

In fact, one justification frequently cited for offering richer pensions is to attract and hold onto quality workers.

"What dentist in his right mind would want to work in a prison?" jokes Marc Weisman, chief dentist at California State Prison, Sacramento. Weisman made the move 14 years ago because he was tired of the non-dentistry duties of private practice, such as managing staff and ordering supplies.

Weisman took the job before prison dentists won public-safety pensions, but says that adds to the appeal of a lower-paying job.

Many state workers and their unions argue that a solid pension makes up for paychecks they say are anemic by private sector standards.

While that is true for many classifications, it's not universal. A 2002 state survey of 17 benchmark job titles found state pay exceeded the private sector's in five classifications.

Critics of the pension policies say the public is largely unaware that the enhancements have been extended well beyond the workers who routinely put their lives on the line.

"To dilute that and abuse that contract we want with true public safety, it's a manipulation of taxpayers and a manipulation of the process," said anti-tax advocate McCarthy.

The gun-toters and hose-pullers also see it as an erosion of a benefit originally crafted for those who need to be agile and strong - and who lay their lives on the line.

"I have watched the expansion of the safety category for years ... as one group gets it, two others want it," said D.O. "Spike" Helmick, commissioner of the California Highway Patrol - which in 1935 was the first recipient of special pensions.

"Our organization is 75 years old - we've had 200 people killed on duty; Certainly, there haven't been 200 milk inspectors killed," Helmick said. "I don't fault the employee unions for pushing for it - that's their job. But it's the job of the policy-makers to say no."

The latest group to get public-safety pensions is the more than 3,200 workers represented by the California Union of Safety Employees, or CAUSE. On July 1, those workers will be shifted to the "safety" retirement category, entitling them to retire at age 55 with 2.5 percent of their salary for every year served. Most state workers get 2 percent at 55.

The union membership does include fraud investigators and hospital police, who have long been included in the category entitled to higher benefits.

But about half its members have a more tenuous claim to the public-safety mantle - "dairy foods specialists" for instance, or "highway outdoor advertising inspectors" - the people who enforce billboard laws. Two of the largest classifications are the 579 DMV examiners and the 689 CHP dispatchers.

For years, CAUSE tried to get these workers into the safety-retirement category, according to Sam McCall, who worked for the union for 17 years.

"Sometimes, we just could not get an ear," he said.

In 2001, the Department of Personnel Administration again refused to grant safety status to the CAUSE workers during contract negotiations.

But even as administration negotiators rebuffed the union, McCall said, the governor assured union leaders that the Legislature would come through.

McCall recounts how Davis had several face-to-face meetings with union President Alan Barcelona in the aftermath of the union's 2001 contract. The union described them in a notice to its members as "very productive discussions," with Davis agreeing to have legislation introduced providing public-safety retirement for 95 percent of the CAUSE workers who didn't then have it.

The following April, a bill concerning renters' security deposits was gutted and rewritten to put CAUSE workers into the "safety" retirement category. Davis' union negotiators, who had long blocked such a move, changed course and agreed to it, according to internal documents from the administration.

The author of SB 183 was Senate President Pro Tem John Burton, the San Francisco Democrat generally considered second only to the governor in political pull. Burton's bill also gave the state's best retirement formula - 3 percent salary credit at age 50 for each year worked - to the union's peace officers.

It was a departure from rules established just four years earlier. The Legislature, trying to slow the flow of safety-retirement bills, passed a law giving the Department of Personnel



Administration the power to determine whether various prison and state hospital workers met the criteria of safeguarding the public or supervising inmates and patients.

The department had said for years that it didn't think the CAUSE workers qualified. And the state's retirement system, CalPERS, continued to hold that position. The employees "do not meet existing criteria," it said in a memo to the governor.

But as the bill worked its way through the Legislature, CAUSE opened its wallet. It gave lawmakers more than \$500,000 during the course of 2002, and it gave a similar amount to Davis alone. The Democratic governor, running for re-election that fall, got \$100,000 three days before the bill was rewritten to include its workers, \$5,000 the day it passed in the Assembly, and another \$250,000 two weeks after he signed it.

"We let him know that he was our candidate, and that one of the issues that was important to us was this retirement," McCall said.

As the bill reached Davis, his administration warned that it would cost the state \$8.9 million a year, just as the Legislature faced a budget shortfall of \$23.6 billion.

The 3,241 CAUSE workers in 71 classifications are just the latest expansion of the public-safety rolls.

In contract bargaining in 1999, the state tentatively agreed to safety pensions for the deputy commissioners of the Board of Prison Terms, which conducts parole hearings.

The union for the deputy commissioners argued that they spent more than half their time in state and county institutions, and were sometimes left alone with inmates during hearings while parole agents retrieved other inmates or witnesses. The union's proposal was that the job be divided in two, between those who preferred to avoid that risk and those willing to accept it, who would receive the higher pensions.

But the following year, that plan hit a snag: the State Personnel Board refused to create a separate job classification for those deputy commissioners working under the tougher conditions.

The duties of the workers had not changed, a board analyst wrote. The union's list of violent incidents from parole hearings mostly involved verbal threats. When there were physical assaults, the analyst said, "There is no indication of the Deputy Commissioner's role in quelling the behavior."

Lacking the new classification, the state Department of Personnel Administration - which had negotiated the 1999 contract - chose an alternate route: giving public-safety pensions to all the employees in the job title, now 52 people.

As early as the 1960s, CalPERS had warned the Legislature that it would face "massive pressures" from groups angling for safety-retirement status. In a report, it recommended sticking to the narrow definitions of police and firefighters.

At the time, only about 5 percent of the state work force got some sort of enhanced pension for protecting the public: CHP officers, firefighters and fish and game wardens.

But a review of legislation and CalPERS annual reports indicates the state was about to open up the gates.

In 1971, prison guards were included.

Four years later, the State Personnel Board recommended extending public-safety retirement to prison workers who sometimes had custody of inmates. A crop farmer might supervise inmates outside the prison walls with no backup, the report said, or a vocational teacher might be isolated in a tool shed with prisoners.

A bill adding these 1,942 workers was introduced the following year. Sponsors said that prison conditions made the employees "tense and jittery," and sent Gov. Jerry Brown photographs showing them working near inmates.

One showed a mechanic overseeing inmates "with only a whistle for protection." Another depicted a medical assistant working alone in a pharmacy among cabinets filled with narcotics.

Gov. Brown said that while he ordinarily opposed expansion of the special retirement classes, he would allow the bill to become law without his signature because of the "special difficulties" faced by prison workers.

After that, new classifications were added almost every year for the next 25.

In some cases, job titles that had been specifically blocked from getting special pensions got them years later. A 1987 bill granted peace officer status to the security guards at Department of Justice buildings, allowing them to carry weapons. But an amendment blocked them from getting better retirement as a result.

It took 13 years, but in 2000, the Legislature passed a bill granting the security officers the richer pensions other peace officers get.

Other state workers have argued that they deserve the benefit because of the hazards they face.

At Napa State Hospital, workers recount violent episodes as evidence of the extraordinary demands of their jobs.

"The client had a delusional belief that she has millions of dollars," said Judy Ness, a psychiatric social worker on a unit that treats women who have been civilly committed. "If I can't produce all that money, I'm obviously taking it and I'm out buying BMWs and condos and yachts... . She clobbered me in the head and I got a concussion."

Napa workers say they must constantly be aware of where patients are, what kind of days they're having, whether they're carrying a grudge.

"In that sense, it may be no less demanding in its own way than being a firefighter or a Highway Patrol officer," said Kathleen Patterson, a psychologist there.

The sprawling prison system has a wide variety of jobs, from armed guards forcing high-security inmates to leave their cells to engineers laying out projects and ordering supplies.

Some prison workers covered by public-safety pensions appear to face little risk of attack. Court and retirement case files provide a glimpse of some workplace conditions.

In one instance, a program administrator in the Department of Corrections in charge of joint ventures with private industry spent much of his time in an office or traveling to trade shows and business meetings. In another, a woman supervised three or four nonviolent inmates in a warehouse outside the main prison walls.

More than 90 percent of assaults of prison workers involve guards and other peace officers, according to figures compiled by the Department of Corrections. The rate of assault is three times higher for peace officers than for other prison workers eligible for public-safety retirement.

The likelihood of risking life and limb to protect the public seems even more remote for some of the classifications to be added in July.

Take the "managing deputy commissioners" at the Department of Real Estate. According to state specifications, the deputy commissioners "plan operations, develop staffing requirements, organize and direct the work of a group of employees and evaluate their work."

Many of the newly covered classifications are inspectors charged with enforcing state regulations.

"They frequently have face-to-face hostilities with the people they meet," said McCall, the former CAUSE attorney. "Even the inspectors of mattresses, chairs - those people meet hostile environments."

But the state's bestowing of public-safety pensions for risky jobs is far from consistent. In 1978, a tax compliance worker investigating a scam at a housing project was attacked by two teenagers, who threw him to the ground and repeatedly banged his head on the concrete.

Robert Overend went to court seeking a public-safety retirement. In 1991, an appeals court turned him down.

"It was one of the saddest cases I've ever seen," said his attorney, Al Klein. "The state classifies you a certain way... . You can't make the argument you've been misclassified and get anywhere."

**Medical pensions: Is the state's system sick?**

By Dorothy Korber and John Hill -- Bee Staff Writers - (*Published May 10, 2004*)

*Second of two parts*

Half pay, untaxed, for life. That's the California pension formula for public-safety personnel so badly injured at work they no longer can do their jobs.

No one questions a special disability retirement for a young Sacramento County deputy left debilitated when his spine - and his career - were shattered during an arrest.

But what about a state nurse who suffers anxiety about sick people? Or a prison guard who hurt his knee schlepping a big coffeepot upstairs? Or the investigator who racked up two consecutive disability pensions, both for the same heart condition?

Under state law, all three retired with the same special medical pension as the disabled deputy. They joined legions of other safety workers who claimed a permanent "industrial disability" to gain this popular perk.

Two out of three retirees in the California Highway Patrol are on these medical pensions. Among local police and fire retirees in the state pension system, it's nearly one out of two.

Such retirement benefits are a growing expense for cash-strapped California. Even so, they've escaped scrutiny as a new governor and Legislature wrestle with the record deficit.

Over a five-year period, the California Public Employees' Retirement System estimates that new safety disability pensions cost the state \$493 million. On an annual basis, the cost increased 65 percent between 1997-98 and 2001-02.

That increase coincides with the tenure of Democratic Gov. Gray Davis and a labor-friendly Legislature. Prodded by public-sector unions, the politicians passed a series of bills that expanded eligibility for these medical pensions - and made it easier to get them.

The rationale for disability retirement benefits for safety workers is reasonable enough: protect those who risk their lives to protect us. But, in practice, the system is enormously complicated and ripe for abuse, yet also often sadly inadequate for those severely disabled.

"This benefit was designed to provide for the young firefighter or police officer who is seriously hurt on the job," said Bob Palmer, president of the California Association of Public Retirement Systems. "What it has become is an entitlement, just another retirement option for people near the end of their careers."

On top of the state's bill for this special disability pension come added costs to California counties and cities, where safety workers' benefits - by law or binding union contracts - generally match the state's. On top of that comes a loss in income tax revenue.



The costs are rising, too, as more public employees come under the public-safety category and more of their disabilities are declared job-related. John Descamp, chief of the Sacramento County Employees' Retirement System, blames politicians who will not say no to powerful interest groups.

"It's driven by greed and political posturing," Descamp said. "Once the formula is established for one group, then every group wants it. It's piecemeal."

Yet this is not news to state officials. A decade ago, concern about the large number of industrial-disability retirements in California triggered a host of reform proposals. There were calls for rigorous physical fitness tests for safety workers, for keeping disabled employees on the job in "light-duty" assignments, and for clamping down on fraudulent claims.

In October 1994, the state auditor recommended that pension benefits be reduced for "disabled" retirees who earn outside income that exceeds their pre-retirement salaries. In July 1998, the Department of Personnel Administration recommended pulling managers out of the public-safety category.

In the mid-1990s, both the California Highway Patrol and CalPERS set up special units to investigate disability fraud.

Ten years later, most of those reforms are in limbo and the system seems looser than ever.

Since 1999, intense lobbying by public-employee unions has significantly expanded the kinds of disabilities automatically presumed to be job-related for public-safety workers. The list grew with every session of the Legislature: heart trouble, cancer, blood-borne diseases including HIV, hernias, tuberculosis.

Employers complain that the "heart trouble" presumption, in particular, is too vague and ignores the role that diet and tobacco play in cardiac disease. It's also problematic to presume that all cancers are job-related, said Palmer, who also is the administrator of San Joaquin County's retirement system.

"The law just says cancer," Palmer said. "On one hand, maybe lung cancer for a firefighter makes sense. But colon cancer for a firefighter? You have to question the relevance."

Yet union lobbyists argue that it is sometimes impossible to determine the original site of a cancer or to pinpoint a specific carcinogen that triggered it.

In general, the unions say, the presumptions allow their members to get treatment under workers' compensation without having to spend time and money fighting for it. But a workers' comp claim also is used to set the stage for retirement with a lifelong disability pension.

"What these presumptions do is shift the burden of proof to the employer to show the problem is not job-related," said Steve Keil, legislative coordinator for the California State Association of Counties. "As a practical matter, that's often impossible to prove."

But Sacramento lawyer David E. Mastagni, who represents safety employees in their disability claims, counters that employers do challenge the presumptions regularly.

"If they never won, then the employers wouldn't challenge them," said Mastagni. "These presumptions are valid. Think about it: This is someone who is supposed to raid a drug lab or go into a burning building without thought for his own safety."

Not every presumption involves heroics, however.

Lower-back pain, a presumption created by the Legislature in 2001, applies to peace officers who wear the wide woven gun belts known as "Sam Browne belts." The measure, SB 424 by Sen. John Burton of San Francisco, provoked howls of protest from cities and counties who foot the bills for workers' compensation and disability pensions.

"We jokingly called it the Doughnut Disability," Keil recalled. "The duty belt is presumed responsible, even if the officer is 50 pounds overweight. And who doesn't have some lower-back pain as they get older?"

Indeed, medical research finds that 80 percent of all adults suffer from occasional lower-back pain, and between 5 and 10 percent have a chronic problem.

SB 424 had supporters with political muscle: the California Association of Highway Patrolmen and the Peace Officers Research Association of California - which together in 2000 and 2001 gave more than \$1.4 million to California politicians and political causes - along with big police unions in Los Angeles and Riverside.

The bill passed the Senate on a 24-10 vote, the Assembly by 75-2. Assemblyman Ray Haynes, then a Republican state senator from Riverside, was a lonely voice of opposition in the Legislature.

"This absolutely removes the possibility that the individual hurt their back shoveling rocks, lifting weights, or any other activity pursued on their personal time," Haynes wrote to Gov. Gray Davis, urging a veto.

When SB 424 reached the governor's desk, Tim Gage, Davis' own finance director, recommended a veto, arguing that the presumption "would make it almost impossible for state and local agencies to reject claims that completely lack merit."

But Davis signed SB 424 on Oct. 12, 2001, thereby casting aside another restriction on industrial-disability pensions. (Davis declined to be interviewed for this story.)

Last year, one of the few remaining limits was eliminated in a \$250 million court settlement.

Based on a 1980 law, this rule reined in benefits paid to older workers who had put in only a few years on the job before claiming the half-pay retirement benefit. The idea was to cap their disability pension at whatever their regular pension would have been if they'd worked until retirement age.

So Lana Hoffman, the anxiety-prone nurse, was initially granted just 11 percent of her pay as her disability pension. Her lawyer, Fresno attorney Thomas J. Tusan, said Hoffman deserved her full disability pension, even though she'd been on the job at Corcoran State Prison for only four years.

Tusan sees no irony in the notion of a nurse made anxious by caring for the sick. She worked in the prison's AIDS ward, he noted. "The standard for a disability pension is: Can you work at your usual and customary duties?" he said. "She could not."

Likewise, John Haggard, who hurt his knee carrying the coffeepot, received a reduced pension, based on his eight years with the Department of Corrections. At his hearing, Haggard said he and another officer were carrying the 50-pound container upstairs to prisoners who were "locked down" and so had to be fed in their cells.

The U.S. Equal Employment Opportunity Commission challenged the 1980 law as discriminatory toward older workers. In early 2003 - after a prolonged court battle - CalPERS agreed to settle. Hoffman and Haggard, along with 1,700 other public-safety workers, were awarded the half-pay pensions, retroactively.

Another beneficiary of this settlement was Michael D. Hunter, who actually was granted two safety disability retirements - one an untaxed half-pay pension from the San Diego County Sheriff's Department and another from the state, after working 18 months as an investigator for the Department of Motor Vehicles.

Both were for the same heart arrhythmia.

Such double-dipping for industrial disabilities is not uncommon and is perfectly legal in California, if two separate pension systems are involved - in this case, CalPERS for the DMV and San Diego County's own retirement system.

Half pay, untaxed, for life. Understandably, it's a sought-after benefit for the state's safety workers - among them the prison's correctional officers, psychiatric technicians and, starting this July, even milk inspectors - as well as for local deputies, firefighters and cops.

But, on a percentage basis, no employee group logs more industrial-disability retirements than the California Highway Patrol.

Nearly 70 percent of CHP retirees leave work on an industrial-disability pension. Their average age is 53 - they're eligible for regular retirement at 50 - and their average monthly benefit is

\$5,458. That's \$600 more than CHP officers who take straight retirement, and it's quadruple the monthly pension of non-safety state workers.

If they've reached retirement age and take a disability pension, safety workers get either half pay or their regular retirement benefit - whichever is higher. Either way, the first 50 percent is untaxed, which means that many Highway Patrol retirees actually net more each month in retirement than they received when they were working.

The end-of-career timing raises suspicions, even for CHP Commissioner D.O. "Spike" Helmick, who is among those eligible.

"It's amazing that they can do the job till the day when the magical wand is waved and they're at the top of their retirement benefit," Helmick said. "It's not that people are lying - the law allows them to get these retirements. But they're using the law."

Although Helmick himself is entitled to an industrial-disability retirement - "I've had an injured back for years from car wrecks" - he plans to go out with a regular service pension instead.

"But that decision is difficult if you take the calculator and add it all up," he said. "You begin to wonder who's stupid and who's smart. If, without breaking the law, you could increase your retirement 20 percent every month, would you do it?"

Helmick said the Legislature should revisit the disability presumptions as well as the rule against giving injured CHP officers light-duty assignments, a prohibition spelled out in the vehicle code.

Within the CHP, all officers - even those with sedentary desk jobs - are expected to be able to carry out 14 "critical tasks" involving physical skills. That includes proving they can extract a 200-pound victim from a vehicle.

Disabled officers sometimes are forced to retire against their will.

"I know a lot of personal friends who were hurt - I've wished we didn't have to dump them into disability," said Jon Hamm, executive director of the California Association of Highway Patrolmen. "I'm not saying we have no abuses, but I've talked to many others who say: 'I don't want to retire, but they're going to make me. I'm excess baggage.'"

That sentiment was a mantra at a gathering of CHP retirees at a Laughlin, Nev., resort in March. The former officers, most of them appearing tan and fit, talked about their pride in serving in the patrol - and the physical rigors of a job that kept them on the road, whether desolate highway or crowded freeway, rain or shine.

Many of them went out on disability pensions.

"I did a job I loved for nearly 30 years," said Jim Mortensen, 73, who retired two decades ago. "When I joined the CHP in 1957, there were no disability presumptions and no (retiree) health

benefits. I know the fight we went through to win those improvements. My firm belief is that CHP officers deserve those things."

Mortensen, who lives in Vacaville, took an industrial-disability retirement after he injured his back during an undercover assignment in 1981.

"I hung on for two years after the injury," he said. "I planned to work till the bloody end. But the doctor told me I could no longer be a highway patrolman. It broke my heart."

It was patrolman Conrad Schneider's heart that went. He had a massive coronary at age 42 and his career was finished. Schneider, who at 68 is the security chief for the Riverside Casino in Laughlin, is a quiet man. He headed outside to have a smoke while his wife told his story.

"I don't know if you understand the stress these officers are under," Louise Schneider confided. "They experience the most gruesome and heartbreaking situations and are told 'just suck it up.'"

"After his coronary, the doctor gave Connie only a 50-50 chance of recovering. And the first thing Connie said when he finally came to was 'They're going to make me retire! I don't want to retire!'"

A heart attack also drove Virgil Hartz into retirement; he was 55.

Virgil and Diane Hartz paddle their kayak...  
... and get ready for a bike ride near their Needles home.

He retired on disability from the California Highway Patrol after a heart attack; his wife, still a CHP officer, plans to retire in July after 30 years of service.  
Sacramento Bee/Brian Baer

"I was done," he said. "My doctor told me no way was I going back to work." He blames job stress for his heart trouble.

"You go through 25 or 30 years on patrol, and there's constant turmoil," said Hartz, now 62. "The public is mad at you, and your supervisors aren't all that happy, either. You're stressed just at the thought of a pursuit. Or you go to a fatal accident and have to tell parents that their 2-year-old is dead."

But fatalities and deadly pursuits aren't the only source of stress, said his wife, Diane Hartz. A CHP officer herself in Needles, she will take a regular service retirement this summer - not a disability retirement - after 30 years with the patrol.

"Working in the city," she observed, "you can have 700 accidents in the rain in a 24-hour period. You're trying to juggle and prioritize all those competing demands, and everyone is angry at you."

The Hartzes believe that most CHP disability retirements are well-deserved. If there are phony claims, Diane Hartz said, they should be weeded out and prosecuted.

"Excuse me? This is a job where people are supposed to have high integrity," she said. "If they lie about being disabled, the investigators need to nail them."

Half pay, untaxed, for life. After five years with the Riverside County Sheriff's Department, that's what Deputy Linda Morelli was banking on. Her case seemed open-and-shut.

Who would deny a disability pension to a helicopter pilot whose spine was fractured when her police chopper suddenly died and spiraled to the ground?

Ron Komers, for one. He sent Morelli back to work.

Komers, Riverside County's human resources director, embraces a tough attitude toward industrial-disability pensions, turning down many claims and fighting energetically when an employee files an appeal.

"Riverside County is a lightning rod for this issue in California," said Steve Keil of the state counties association.

While CHP brass say that most safety medical retirements are simply not disputable - and many local agencies throw up their hands at the idea of challenging a disability presumption - Riverside County is tackling the situation head-on.

There, any disability retirement based on a presumption is automatically disputed. Any request for disability retirement filed after the employee has taken a regular retirement is automatically turned down. Those who claim they can no longer perform their regular duties had better be ready to prove it.

"It's true that different agencies have vastly different standards of applying the policy," Komers said. "It makes me angry when some agencies ... grant everything that comes along."

Riverside County errs in the other direction, said lawyer Jim Cunningham, who has represented safety employees for 17 years. He's also the new executive director of the deputies' union.

"To say that our people have this culture of entitlement is outrageous," Cunningham said. "The culture, if anything, is not to report an injury - they don't want to be forced into retirement."

"I'm seeing more valid claims being challenged now than I've ever seen before. If Riverside County is the lead in anything, they're the lead in considering economic considerations over the validity of the injury."

Four years ago, Komers hired an assistant, Jennifer Cooper, to pursue questionable claims for industrial-disability retirements, designating her as a kind of fraud-buster. She's zealous about her mission, an admittedly confrontational one.



"Over and over, we hear the same angry response when we reject someone's claim," Cooper said. "They say, 'I've earned this! I deserve this!' I tell them: Your regular service retirement is what you deserve. It's extremely generous. If you're not disabled, you don't get the industrial-disability retirement too."

Some of the cases she undertakes may seem extreme: The respected sheriff's lieutenant whose sense of duty kept him on the job for years, despite his disabilities. ("We didn't want to set a precedent," Cooper said.) Or the young deputy who was shot in the wrist - by another officer - while he was wrestling with an armed suspect. ("It was just a graze.")

Of Riverside County's last 149 applications for safety disability pensions, 67 were denied. So far, the county has lost just one case - that dutiful lieutenant's.

"But my biggest success is not the cases we win in front of a judge," Cooper said. "The biggest wins are those people who decide not to file - the deterrent effect."

Riverside's combative attitude troubles Descamp of the Sacramento County retirement system.

"The problem I have with that is, if you take a damn-the-torpedoes approach, you can throw up hurdles for the employee unnecessarily," Descamp said.

Descamp contends that a more deliberate approach builds employee trust - and still provides adequate checks.

"We do our investigation and challenging on the front end. We take our time and do it right," he said. "We're rigorous but fair, and our members know it, so they're less likely to file untenable claims."

The statistics tend to bear him out. Of the 994 safety retirees in Sacramento County, just 169 (17 percent) are on industrial-disability pensions.

In Riverside County, with 993 safety retirees overall, 430 (43 percent) are on industrial-disability pensions. That's still less than the statewide average of 49 percent, but it was high enough to propel Komers into his aggressive mode.

Now Komers is looking beyond enforcement to the physical roots of the problem. In December, he persuaded Riverside County supervisors to adopt a program aimed at preventing workers' disabilities and injuries in the first place.

Komers' strategy is to push wellness by monitoring absenteeism, requiring physicals and drug testing, and making every new deputy sheriff sign a no-smoking pledge.

Riverside County is not alone in deciding to reward wellness as a pre-emptive strike against disability retirements. In March, San Mateo County adopted its own no-smoking policy for

sheriff's deputies. Other places offer incentives for fitness, and some are talking about mandatory physical testing.

In the final analysis, Komers suggests, there are things more important than a half-pay pension - even an untaxed one.

"When you look at it, you see that most of these people are in their 40s and 50s when they develop these job-related disabilities," Komers said. "We'd like to help them avoid developing the disabilities. Nobody wants to have heart trouble or cancer - or die young.

"All things considered, would you rather have spinal surgery plus a lifetime income, or not have spinal surgery at all?"

### **California Insider**

A Weblog by Sacramento Bee Columnist Daniel Weintraub, August 25, 2004

#### **New CHP contract**

Weeks after taking lumps for a wimpy re-write of the state contract with prison guards (also known as correctional officers) Schwarzenegger is quietly pushing through a more modest re-do of the labor deal with the California Highway Patrol. Most of the deal is relatively benign. It extends for six months, for example, an arrangement by which CHP officers are deferring a 5 percent pay raise in exchange for a like amount of paid time off.

But one provision in the new contract is especially curious. And the trail once again leads back to the final days of the Davis Administration.

It seems that on Oct. 5, 2003, two days before the recall, a top Davis official signed off on a deal with the CHP union that gave the officers overtime pay for the half-hour each day they were supposed to be eating lunch. The move was made without public notice or legislative approval, even though it was the equivalent of a 3 percent pay raise for every member of the force. (An earlier change had given the officers straight-time pay for the that half-hour, a 6 percent pay bump, even though most state employees eat lunch on their own time).

Now comes the Schwarzenegger deal, and for whatever reason, the union has decided to give back the overtime they won from Davis. But not for nothing. That perk has been traded for a bunch of new holiday and leave pay.

Officers now stand to get 52 hours of additional holiday leave hours (for a total of 164) and 12 more hours of vacation time each year - or an additional 64 hours of paid leave.

The net effect of all that time off, of course, is to increase the need to hire more officers or, if not, to pay more overtime to cover shifts.

**UPDATE:** A CHP officer notes that there is one other possible outcome, one he insists is the most likely result: that the CHP force will simply be spread thinner throughout the state to

compensate for the increased time off, because the shifts of officers who are sick or on vacation are routinely not covered by others.

Posted by dweintraub at August 25, 2004 09:48 AM

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**'Chief's Disease' rife at CHP -- Strong pursuit of injury claims boosts top officers' retirement benefits.**

By John Hill and Dorothy Korber -- Bee Staff Writers - *(Published September 10, 2004)*

After 33 years on the job, Deputy Commissioner Ed Gomez was ready to end his career with the California Highway Patrol. He was so disabled by workplace stress and physical ailments, his doctor said, that he could no longer work as a CHP commander.

The doctor's report said Gomez must "avoid more than ordinary stress in further occupational endeavors." In 2000, the 57-year-old was awarded a \$39,000 settlement, medical care for life for his injuries, and a state industrial disability pension of \$106,968 a year - half tax-free.

Barely two years later, Gomez was hired by the federal government to be security director at San Francisco International Airport, a position described as "on the front lines of the war on terrorism." It's a job he holds today.

Gomez is a prime example of a widespread practice documented by a Bee investigation: top-tier CHP officers aggressively pursuing injury claims, often near the end of 30-year careers, that hike their retirement income. Like Gomez, some go on to demanding second careers while collecting their state disability pensions.

Inside the CHP it's known as "Chief's Disease."

Of 65 high-ranking CHP officers who have retired since 2000, 55 pursued workers' compensation settlements within two years of retiring. These injury claims formed the basis for disability settlements and medical pensions.

Rank-and-file officers complain that this behavior among many of the 150 or so chiefs and captains at the top sets a bad example for the 7,000 officers they supervise, in a department that pays the highest rate in state government for injuries and medical pensions.

The practice is so well known at the CHP that many officers can name the handful of chiefs who retire without medical pensions or workers' compensation claims. They stand out because they are unusual.

Far more common are cases of Chief's Disease, such as the captain hurt in an accident in her private car who successfully claimed the collision occurred on the job.

Or the deputy chief who suffered episodes of racing heart described by a doctor as a danger to the public, and skin cancer attributed to years of patrolling the highways, who found a new career as a scuba instructor in sun-soaked Hawaii.

Or the captain found to be 61 percent disabled from knee injuries, ulcers, high blood pressure and hearing loss who took a medical pension from the CHP only to sign on as assistant sheriff of Yolo County.

In most cases, the disability benefits augmented the ample pensions routinely paid to CHP officers, who can retire at age 50 with up to 90 percent of their pay.

### **Hard to stop claims**

State Sen. Jackie Speier, a Bay Area Democrat who chairs the Select Committee on Government Oversight, said she was shocked by The Bee's findings.

"This data is just staggering," Speier said. "My expectation of law enforcement officers is that they are above reproach. The data suggests that is not the case. It turns out we need to be policing the police."

Even the CHP's top boss said it had gone too far - just weeks before he decided to go the same route.

"Some of these people have pushed the envelope on this and it's just grown and grown and grown," CHP Commissioner D.O. "Spike" Helmick said during a June interview in his capital office. "The system is so lucrative, I'm afraid people are going to take advantage even if they're 100 percent ethical."

In July, Helmick filed the papers to seek his own medical pension. The commissioner, who retires next week, has made five injury claims in the past three years, including one based on a fall from his office chair in 2000.

Absent outright fraud, it can be hard to rein in the aggressive use of the disability system, according to administrators and lawyers who work within it.

For one thing, they suggest, a worker unable to handle the stress in one job might still thrive in another career - even an apparently stressful one.

"It's how you perceive it," said Herman Zayon, a Northridge lawyer who has represented CHP officers in workers' compensation claims. "That's why it's difficult to talk about this on a generalized basis."

Gomez, for instance, draws a clear distinction between the CHP job he held for 33 years and his new endeavor.

"This is strictly administrative," he said of the airport job. "I am not a law enforcement officer. ... My job is to deal with politicians, the airport director, Washington and the police."

Still, despite the opinion of two doctors that he should avoid stress, Gomez conceded his new role guarding against terrorist attacks has plenty of it. In a profile published in the San Francisco Chronicle two years ago, he said his new job kept him awake nights, even after 16-hour days.

"Every time a plane takes off here, I'm scared to death," he told The Bee.

Gomez was thoroughly checked out before he was offered the position, according to Nico Melendez of the Transportation Security Administration, the federal agency that hired him. Melendez declined to comment on Gomez's medical condition.

"To secure a job such as this, you have to meet the highest standards," he said. "We want to know their complete work history. Medical records are something else. Are you asking if we discriminate against someone with a disability? We do not."

San Francisco International Airport is in Sen. Speier's district. Asked about the Gomez case, she said: "If someone has a miraculous recovery, then they're not eligible for a lifetime tax break. It's an insult to the taxpayers of the state that they continue to draw a disability pension if they're not disabled."

### **CHP tops disability list**

The CHP has the highest rate of disability retirements in the state - nearly 70 percent of its retirees. And among large departments, it pays out the highest portion of payroll for workplace injury claims. Together, these benefits cost taxpayers about \$75 million in the 2002-03 fiscal year.

A high rate of injuries is understandable in a department with the primary role of patrolling the state's highways and protecting the public. Officers can be hurt in car crashes or confrontations with criminals.

"I would rather not have a titanium hip and be able to say I don't need an industrial disability retirement," said Garand Gruber, a deputy chief who retired in 2002 after being told he needed a hip operation to deal with the effects of motorcycle accidents.

But The Bee found that many workplace injuries to top CHP officers did not stem from violence or traffic accidents.

Instead, workers' compensation records show, the chiefs claimed they suffered from the cumulative wear and tear of the job - even though in recent years they spent more time behind a desk than behind a wheel.

Several pursued disability claims only when faced with disciplinary actions or other career setbacks.

After winning workers' comp settlements and medical pensions, many top CHP officers went on to other jobs, some of which seem at odds with the disabilities for which they filed claims with the state.

### **Claims rolled into one**

The Bee's analysis found that more than 80 percent of the top officers who retired in the past four years claimed they had suffered a debilitating injury just as they were poised to retire.

CHP officers classified as injured typically get settlements of tens of thousands of dollars to compensate them for their loss of competitiveness in the job market. These settlements regularly include lifetime medical treatment for injuries - no co-payments or deductibles - and a full array of care.

"You can't buy that anywhere else," said Barry Pearlman, president of the California Workers' Compensation Defense Attorneys' Association, whose members represent employers in injury claims.

But that's not all. Injured officers can get up to a year of full pay, tax-free, while temporarily disabled. Their workers' compensation cases also often form the basis of a medical pension that allows them to shelter half of their regular pension from income taxes. So, for veteran officers, a medical pension can mean more money in their pockets than when they were working.

If their injuries had forced them to leave the CHP before the retirement age of 50, they would have been left with only half their salary.

In many cases, the injuries claimed in these cases originated years earlier - hearing was damaged, for instance, when officers fired guns at target practice without adequate ear protection.

Another common claim is "cumulative trauma" - a host of maladies that build up gradually.

Workers' compensation lawyers advise clients approaching retirement to roll a lifetime of complaints into one disability settlement, "so you can ride off into the sunset," said Frank Floyd, state contracts program manager for the State Compensation Insurance Fund, which acts as the state's claims adjuster.

The CHP officers involved often suffered from maladies common among people of retirement age: bad backs and knees, heart trouble, loss of hearing. "What the Legislature and the courts have said is that the aging process is compensable," Floyd said.

### **System favors workers**

Absent outright fraud - lying to get a benefit - it can be very difficult to block such claims, Floyd said, especially in a system that by law must take a liberal approach to granting workers' comp benefits. The state's "no fault" workers' comp system was designed to give the benefit of the doubt to injured workers, in return for workers giving up the ability to pursue civil lawsuits.



CHP chiefs do know the system well, having administered it. But they also are as subject to injuries from stress as the officers who patrol the roads, said Zayon, the workers' comp lawyer.

While it may look suspicious for officers to claim injuries just as they approach retirement, he said, there's a reasonable explanation: Officers minimize their injuries when they're young.

"They don't complain, they do what they have to do, because they don't want to leave their jobs," Zayon said. "Maybe that catches up to them when they're older. They're claiming when they retire what they should have got at a younger age."

In its examination of cases, The Bee analyzed hundreds of pages of medical records submitted to the Workers' Compensation Appeals Board, which must review all settlements and rule on disputed cases. Many of the cases examined by The Bee, filed in state offices from Redding to San Diego, consist of voluminous reports from multiple doctors, often with conflicting opinions about each worker's injuries.

Sometimes, workers were found permanently disabled because they could no longer perform 14 critical tasks demonstrating physical fitness. Even CHP chiefs, whose jobs are mostly administrative, must pass that test.

Every CHP officer, for instance, must be capable of extracting a 200-pound victim from a car and dragging that victim 50 feet.

High-level officers defend those requirements. Even though they don't spend much time on the highways, they say, they still carry guns, wear uniforms and are expected to act when needed.

"What do you tell the lady who's getting mugged?" asked Gruber, the retired deputy chief with the hip replacement. "You're not dispatched to those sorts of things, but just being in the vicinity, you don't roll by them and let a younger guy do it."

State law also prohibits the CHP from assigning officers unable to perform the 14 tasks to "light duty" assignments.

As a result, many CHP officers considered disabled under the state's definition are indeed capable of taking jobs elsewhere. But, in some cases, the new duties conflict with what doctors and the officers said in their injury claims.

### **Doctors disagree**

Ed Gomez, chief of the CHP's Southern Division, left work in April 2000 after his doctor found he was suffering from job stress. He pursued a workers' compensation settlement and an industrial disability retirement, which he received in August of that year.

(The California Public Employees' Retirement System will not release information on such claims, citing medical confidentiality. That makes it impossible to determine whether injuries cited in workers' comp claims were also the basis for the medical pension - although state retirement system officials acknowledged that is often the case.)

Workers' comp records show that doctors disagreed about the nature and severity of Gomez's injuries.

Gomez produced a doctor's report saying he should avoid workplace situations that could trigger nervousness, irritability or tension, such as the need to meet deadlines or focus on detail under distracting conditions.

The Encino physician consulted by Gomez reported that the patient, in his 33 years at the CHP, had found himself in many stressful situations. He responded to the news media and the officers union, doled out discipline and dealt with shootings and injuries of his officers - visiting hospitalized workers about once a week.

He was in charge of all of Los Angeles County, a gigantic swath of rugged territory for the highway patrol, stretching from Sylmar to Santa Monica. During the 1994 Northridge earthquake, the report said, Gomez was up for three days straight.

But another physician, hired by the State Compensation Insurance Fund to determine if Gomez's injuries arose from his work, raised questions about whether he suffered from high blood pressure and found he did not have the gastrointestinal illness he claimed.

"Mr. Gomez is a 57-year-old who apparently has decided to retire and now every possible medical condition is being claimed as work-related," wrote Dr. Richard Hyman, a Los Angeles specialist in internal medicine and cardiovascular disease. Hyman declined to comment on the case, saying he was constrained by medical confidentiality.

A third doctor, also hired by the insurance fund, sided with the first, finding that Gomez suffered from a permanent disability "precluding exposure to undue emotional stress."

Together, his various injuries were found to have caused a 45 percent disability, permanently limiting the kind of work he could do and reducing his ability to compete in the labor market.

By that time, Gomez already had been working for a year and a half as a vice president of a private security company.

A month later, he was appointed by the Transportation Security Administration to fill the new position of federal security director at the San Francisco airport. The position was created by Congress after the Sept. 11, 2001, terrorist attacks to "be the security field marshals at airports across the country."

Gomez said in an interview that his hearing loss and knee problems made it impossible for him to continue at the CHP. He said he pursued the workers' compensation claim after he retired to establish that his ailments were work-related, a guarantee that his medical bills would be covered in later years.

He said he took a pay cut - and gave up perks like an expense account and bonuses - because he wanted to help make air travel more secure, despite the stress.

"If it wasn't for the war on terrorism, I wouldn't be here," he said.

### **Battles with the bosses**

Stress was one reason Deputy Chief Kevin Mince sought a workers' comp settlement - stress resulting from what he described as a long-term conflict with his supervisor. Documents show Mince claimed to have run afoul of CHP top management when he declined a transfer out of Sacramento.

According to a medical report filed in the Oakland Workers' Compensation Appeals Board office, Mince said he decided "if they're going to force me to retire, I was going to explore disability retirement."

One doctor found that Mince had had four episodes of a racing heart, leaving him lightheaded. If that were to happen while he was making an arrest or pursuing a suspect, the doctor wrote, Mince "would be at risk not only as far as he is concerned but the general public as well."

Mince, who had told one physician that he never took a day of sick leave, was found to be 23 percent disabled as the result of headaches, shingles, chest pains and injuries to his psyche. He received a payment of \$13,680 and a guarantee of future medical treatment. In a separate settlement, he was guaranteed future care for skin cancer after the doctor said his job exposed him "to an excessive amount of sun."

In June 2003, Mince retired with a medical pension. He has since found a job teaching scuba diving at Fathom Five/Ocean Quest in Kauai, Hawaii.

"Being a cop has given Kevin an incredible amount of patience and understanding," according to the dive shop's Web site. "Also, if you ever got a ticket from the CHP, this might be the time for revenge."

Mince did not return several phone calls to his home in Hawaii.

### **New job, same field**

Unlike Mince, Larry Hollingsworth, 62, didn't have to begin a whole different career after he retired as a CHP captain. He found work with another law enforcement agency, as an assistant sheriff in Yolo County.

Hollingsworth's 33-year stint with the CHP started winding to a close in 2000. He made a workers' comp claim, saying that the cumulative trauma of the job had caused injuries to his knees, back, hearing and heart, and had led to ulcers and skin cancer.

Again, doctors disagreed about the nature and cause of the injuries. One found no evidence of a work trigger for his back injuries, beyond a motorcycle accident for which he had already received a settlement.

"His job duties over the past several years have been essentially sedentary, other than getting in and out of a patrol car," that physician wrote.

But that September, Hollingsworth twisted his knee chasing a car theft suspect after he answered a call for aid from a patrol officer. At the time, he was meeting with the sheriff of Merced County to talk about setting up a methamphetamine task force.

"I'm in a Hawaiian shirt and Dockers, but I went after him," Hollingsworth said in an interview. "I caught him, but I blew out my knee."

In March 2002, he received an industrial disability pension, shielding half of his annual pension of \$87,276 from taxes.

It took a while for his workers' comp claim to be settled, but in 2003, he was found 61 percent disabled and awarded \$60,222 for knee injuries, ulcers, high blood pressure and hearing loss. The settlement covered future medical treatment for the injuries.

Hollingsworth deserved that amount, the workers' compensation board found, in part because his disabilities would prevent him in future occupations from being able to sit, stand or walk for prolonged periods.

By the time the board ruled, Hollingsworth had accepted an offer from Yolo County Sheriff Ed Prieto, a fellow CHP retiree, to work as his assistant sheriff.

State law limited Hollingsworth to working half time for another government agency. So he worked six months for Yolo County in 2002 and again in 2003.

This year, he sidestepped that limitation by forming a private company and contracting his services to Yolo for \$85,000 annually. After he was contacted by The Bee for this report, Hollingsworth sent a letter to CalPERS asking for a determination about the propriety of the arrangement. In early August, CalPERS replied that it did not comply with state retirement law. Hollingsworth has until Sunday to appeal that decision, and said in an interview that he had gone back to working half time until the issue was resolved.

Like Gomez, Hollingsworth draws a clear line between what he did at the CHP and his current job, which he also calls "strictly administrative." He's responsible for the county jail, internal affairs, personnel and training.

"I love this work," he said of his CHP career. "I didn't want to go. But the physical side of it - that's for the young pups."

## **Injury work-related?**

Denise Daeley, 42, was a younger worker who could no longer handle the physical aspects of the job.

Her career with the CHP came to an abrupt end in April 2000 when she injured her back in a car accident north of Anaheim. Daeley, a captain at the time, was returning from a weekend running race in Las Vegas, the Baker to Vegas Challenge Cup Relay, limited to law enforcement officers.

Daeley was a passenger in her private car, driven by another CHP officer who attended the race, Sgt. Kerri Hawkins. Also in the car were Hawkins' mother and a 12-year-old girl, according to the accident report.

A truck jackknifed in the rain and veered into oncoming traffic, striking another vehicle, which in turn spun into Daeley's car. Daeley and the two other adult passengers reported various injuries, but all three refused medical treatment at the scene, saying they would get it on their own.

Daeley did not receive advance permission from the CHP to attend the event, as required. After she filed her claim, Commissioner Helmick raised questions and an inquiry began.

That internal inquiry found that the CHP, while allowing officers to try out for the team on state time, made it clear that the officers would have to pay their own way to attend the run. "All preliminary indications were that this accident was not job-related," according to the inquiry report.

But it went on to say that Daeley had participated in CHP recruiting efforts during the weekend. The report also mentioned that, during the weekend, Daeley met with a CHP investigator to talk about a case.

The report concluded that the CHP should not oppose the claim, leaving it up to the State Compensation Insurance Fund, the state's adjustor, to decide if the accident was connected to work.

"I had a lot of questions about the case and asked for a whole lot of research," Helmick said.

Floyd, the insurance fund program manager, would not comment on individual claims. But he said that case law has established that workers are on the job if they're doing something that benefits the employer, even if the activity wasn't approved beforehand.

"Would we argue it? Absolutely," Floyd said. "Would we win? Probably not. The body of case law, it overwhelms you."

In 2003, Daeley gained a medical pension, entitling her to half her salary, tax-free, for life. For Daeley, who had received a scheduled promotion to assistant chief a few months after the accident, that added up to an annual allowance of \$57,396.

Daeley did not respond to phone calls The Bee made to her new home in Kauai, Hawaii.

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### **Anti-fraud unit now faces an uphill fight**

By John Hill -- Bee Staff Writer - *(Published September 10, 2004)*

In the 1990s, the California Highway Patrol won praise from coast to coast for cracking down on workers' compensation and disability pension fraud within its ranks.

A Pulitzer Prize-winning series in Newsday, the Long Island newspaper, showcased the CHP's newly formed fraud unit as an example of a state targeting pension abuses. Among the CHP's successes, the newspaper wrote, was the case of a former officer who had claimed she was so disabled she couldn't take clothes out of the dryer but then was captured on surveillance tapes riding in rodeos.

It was the fraud unit's high-water mark.

In its first four years, 1991-1995, the unit looked into 78 cases and referred 10 for prosecution. In the next eight years, the unit handled 62 cases and turned over only four to prosecutors.

Within CHP circles, there is even a dispute about whether the much-praised fraud unit still operates.

"I don't think it's in existence anymore," said Garand Gruber, a deputy chief who retired in 2002.

Commissioner D.O. "Spike" Helmick says it is. But at least one thing has changed. "People have become smarter," he said. "It's become more and more difficult to find them and get them, because I think they're not being quite as blatant."

Assemblyman John Benoit, R-Bermuda Dunes, dealt with the disability system as a CHP captain. In 2001, he took a medical pension himself - citing skin cancer - after 29 years with the CHP.

Even when judges were presented with evidence that an injured worker was engaging in rigorous physical activity outside of work, Benoit said, they tended to accept the worker's defense that he or she was "just having a good day."

As for the CHP's fraud unit, he said, "I know they had some initial successes. I just got the impression that, like so many other managers, they lost some cases they thought were dead-bang cinches" and got discouraged.



The standard for proving fraud is high, said Frank Floyd, state contracts program manager for the State Compensation Insurance Fund. The fund, which acts as the state's claims adjuster, has its own fraud investigators.

To prove fraud, the state must show that a worker, with full knowledge, made a material misrepresentation - a falsehood that influenced the benefit he or she received. Anything short of that may fall into the category of abuse, Floyd said, but doesn't rise to the level of fraud.

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**Official allowed to receive a medical pension as demotion was withdrawn**

By John Hill -- Bee Staff Writer - *(Published September 10, 2004)*

Some disability claims have a particularly curious timing - they are approved just as a worker faces disciplinary action - raising questions about whether the state system for injured workers is being used to ease out problem employees.

In 1994 the CHP sent a notice of termination - obtained by The Bee - to an assistant chief, Michael Garver, after an investigation found that he had sexually harassed female workers in the CHP's Redding office.

One woman said that she was asked to come into his office and lean over a table while Garver took her picture, according to a summary of the investigation's findings. Another woman who accused Garver of sexual harassment won an out-of-court settlement from the CHP.

Two months after Garver's notice of dismissal, the action against him was amended to a two-rank demotion to lieutenant, a CHP document shows. The CHP is not commenting on the change, calling it a personnel matter.

Garver left a voice mail in response to a phone call from The Bee but did not return subsequent calls.

He appealed the demotion, according to his State Personnel Board case, and in 1995 the parties agreed to a compromise: The CHP would withdraw the demotion, and Garver would retire with a previously approved medical pension. If Garver tried to come back to the CHP, he could be reinstated only at the lower rank. And in the future, if Garver sought a new job, the CHP would tell potential employers that he left on a medical pension, according to the personnel board case file.

The sequence of events shows how disability claims can become intertwined with personnel actions.

If Garver had been fired in June 1994, as the CHP originally intended, he still would have been able to claim his normal pension when he turned 50. Retirement case law, however, would have barred him from getting a medical pension if he applied for it after his termination. CalPERS will

not release information about medical pension claims, so it could not be determined whether Garver filed for retirement before or after his termination notice.

Since retirement, Garver has been active in the Fairfield Rotary - where he entertains members by dressing up as Poofie the Clown - and has served as executive director of Solano County's Meals on Wheels program.

But Garver's career at the CHP was not quite ended by his retirement. In 1999, he collected \$4,743 over about three weeks when he came back to testify in a trial involving a dispute with tow truck operators.

**Touch of irony or curious timing imbue 2 officials' cases -- New occupation is linked to helping drivers avoid getting speeding tickets.**

By John Hill -- Bee Staff Writer - *(Published September 10, 2004)*

Many CHP pensioners find jobs after retirement. No longer able to meet the physical requirements of police work, they look for new occupations. Among them are a legislator, a mayor and a private investigator.

But Bob Tindel's post-retirement job bears an ironic relationship to what he did during 30 years working for the CHP.

Tindel, 62, is a technical adviser on a Web site that sells radar detectors - devices used by drivers to avoid speeding tickets. On the Detectors 4 Less site, "Chief Bob" dispenses advice to potential buyers of radar detectors.

"During his career, Chief Bob was involved with traffic law enforcement at every level, from patrol officer and supervisor to field commander," the site reports. "He also was responsible for top-level planning and administration of radar speed enforcement programs. He has broad knowledge of how radar is used on freeways as well as on streets, in both urban and rural environments."

Tindel also is listed as the senior tech support adviser for a company that sells Porsche parts.

Asked about these jobs in a telephone interview, Tindel responded, "You're asking about my private life. I don't care to discuss it." But later, in an e-mail to The Bee, he defended his post-retirement work.

"If it is the nature of my current little job that you find offensive, I hope you will not be surprised (sic) to learn that many retired State workers have found new employment, in a variety of jobs," he wrote.

CHP Commissioner D.O. "Spike" Helmick, told by The Bee of Tindel's new job, instructed the department's attorneys to send a letter to the radar detector company, demanding it stop using a photograph of Tindel in what appears to be a CHP uniform. The Aug. 27 letter says the company

violates state law by making it appear that the CHP endorses the radar detector. The photograph has since been removed, but advice from "Chief Bob" is still available.

"To say that I am disappointed is the understatement of the year," Helmick said. "I can't stop him from saying something, but I can sure stop him from abusing the uniform."

Tindel, an assistant chief, took a medical pension in 2001 at age 56, exempting half of his retirement allowance of more than \$8,000 a month from taxes. He also filed a claim for cumulative trauma injuries to his neck, jaw and upper-right extremity and psyche. He was found to be 75 percent disabled, and won a settlement of \$108,000.

In addition, Tindel qualified for a "life pension" of \$3,000 a year starting in 2008.

**Long Beach Press Telegram -- Another pension ripoff**  
Monday, September 13, 2004 - CHP brass grab generous benefits.

California is extremely generous to its retiring highway patrol officers. The state's lifetime pensions for California Highway Patrol officers can reach 90 percent of their salaries at age 55, and the disability system is designed to ensure that those injured on the job never have to work or pay a medical bill for the rest of their lives.

And how are taxpayers rewarded for that generosity? With widespread and costly abuse of the state disability pension system.

The ploy by top officers who claim disability just before retirement is so common it even has a nickname: Chief's Disease.

It's understandable that the CHP has a high rate of disability claims because the job is tough: Violence and traffic accidents are among the occupational hazards.

But a Sacramento Bee investigative report, published in the Press-Telegram Saturday, shows that many top CHP officials who have been awarded disability claims and additional medical payments based on their inability to work have gone on to take other jobs, enjoying lucrative second careers while collecting large disability checks. Many others were given major disability settlements, payments and tax breaks based on claims that didn't involve getting hurt on the job. Many of the claims could simply be chalked up to aging.

The Bee's investigation of CHP records found that 80 percent of all high-ranking officers who have retired since 2000 (55 of 65) pursued disability and worker's compensation settlements.

There was a deputy commissioner who was awarded a one-time disability payment, a \$107,000 a year disability pension half of it tax-free and free medical care for life as the result of workplace stress. But the ex-commissioner didn't exactly retire to low-pressure Aruba: He went on to work as the top security official charged with preventing terrorist attacks at the San Francisco Airport.

The Bee also found a captain who was declared disabled and awarded an \$87,000 a year CHP medical pension (like the commissioner's, half of it is untaxed) and then took a job as an assistant county sheriff. Then there was the deputy chief who was granted a disability pension for racing heart and skin cancer, only to take a job as a scuba instructor in Hawaii.

A system built out of concern for officers who are unable to work because of injuries suffered on the job has become yet another entitlement program for retiring state workers.

Generally two things are necessary for such abuse: the exploitation itself and systematic flaws that allow people to take advantage. Worker's compensation clearly has such flaws. Though several state agencies investigate worker's compensation fraud, the CHP abuses generally fall within the law's generous boundaries.

Longtime CHP Commissioner D.O. "Spike" Helmick is about to retire, and in a familiar way: He's seeking a medical pension based on five injury claims he has filed in the past three years. One was a fall from his office chair.

With Helmick leaving the post, the state must bring in a new top boss who will commit to putting a stop to the disability system abuses. The second challenge before lawmakers is to tighten controls on the system so it can function as intended caring for truly injured officers instead of padding retirees' paychecks on the taxpayers' dime.

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### **Stupid and smart on CHP disability pensions**

By Daniel Weintraub -- Bee Columnist - *(Published September 14, 2004)*

Spike Helmick dedicated his entire professional life to public service, first as a Highway Patrolman on the streets and later a supervisor and finally chief of the department. But one of his final acts in the job might, in a perverse way, end up being his single biggest contribution to the people of California.

After years of grumbling about the rising cost of public employee pensions and, separately, the abuse of the disability retirement system by members of his force, Helmick made his own grab for the dough on his way out the door. On the eve of his scheduled retirement, Helmick filed a disability claim every bit as suspicious as the ones that, until a few days before, he was complaining about.

His rationale, when you boil it down, is that the money was there for the taking, and he'd be a sucker to pass it up. His lawyers told him so.

Helmick might be right: only a fool would ignore the chance to get half of a \$131,000 annual pension tax-free, allowing him to take home far more in retirement than he ever earned on the job. But that is exactly why the system needs reform, and perhaps Helmick's case will finally bring attention to a problem that has been festering for years.

A package of articles by The Bee's John Hill and Dorothy Korber have documented an epidemic known within the Highway Patrol as "chief's disease" - in which high-ranking members of the department develop mysterious ailments just before retiring. The designation allows them to leave with a disability pension on top of an already generous retirement benefit that in many cases would be close to full pay even without the added perk. Many of these same officers then miraculously recover, finding jobs elsewhere that seem every bit as difficult as the ones they claimed they were no longer healthy enough to perform.

Sixty-five high-ranking CHP officers have retired since 2000, and 55 of them pursued workers compensation benefits within two years of their retirement dates, laying the groundwork for disability settlements and medical pensions. In most cases, the claims didn't result from a single incident but stemmed from the accumulated pains from years on the job.

These officers, The Bee's investigation found, typically get settlements of tens of thousands of dollars, often with lifetime medical treatment for their injuries with no co-payments or deductibles. They also can get up to a year of full pay, tax-free. And if they get a disability retirement, they pay no taxes on half their pension income for the rest of their lives.

Ed Gomez, who was chief of the CHP's Southern Division, left work in April 2000 suffering, he said, from job stress at age 57, after 33 years with the patrol. A few months later he was awarded a workers' compensation settlement and a disability retirement. Freed from the stress he could no longer endure, he is now the federal director of security at San Francisco International Airport.

Larry Hollingsworth, 62, was a CHP captain who filed a claim as he was approaching retirement in 2000. The cumulative trauma of the job, he said, had caused injuries to his knees, back, hearing and heart and led to ulcers and skin cancer. After filing his claim, he twisted a knee chasing a car thief, and by the time he left the force the next year, he was classified as 61 percent disabled and awarded a \$60,000 settlement, plus free medical care.

He then went to work as an assistant sheriff for Yolo County. Because he was limited by law to working no more than half time for another government agency, Hollingsworth worked six months for the county in 2002 and again in 2003. This year, he formed a private company and was contracting his services full-time to the county for \$85,000 until The Bee questioned the arrangement.

Then there is Helmick. Until his own retirement approached, the chief often said he was bothered by cases such as these. It's amazing, he told The Bee in April, how officers can do the job just fine until one day "the magical wand is waved" and they are at the top of their retirement benefit. Though he said he intended to seek a normal retirement himself, he noted that the "decision is difficult if you take the calculator and add it all up. You begin to wonder who's stupid and who's smart."

It's a shame that Helmick, a good man, could not resist the temptation to cash in at the expense of his fellow Californians. Chief's disease is a slap at the people who pay the bills, but also at all those officers who are truly injured and disabled, not just suffering from the aches and pains of



growing old. But if Helmick's exploitation of the system leads to reform, the taxpayers, in the long run, might come out ahead.

Correction. In my Sept. 9 column about charter schools, I wrongly cited the American Federation of Teachers as the nation's largest teachers' union. That distinction belongs to the National Education Association.

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**Editorial: Curing 'chief's disease' -- Remedy lies with Legislature and governor**

*Published September 15, 2004*

The peculiar malady known as "chief's disease" is running rampant through the upper ranks of the California Highway Patrol.

It has allowed many members of the top brass at the CHP to cheat the public and dishonor their badge and fellow officers legitimately injured on the job, all with impunity. Bee reporters John Hill and Dorothy Korber looked at the cases of 65 high-ranking CHP officers who have retired since 2000. More than 80 percent of those officers filed workers' compensation claims, many of them dubious, in their final years on the force, then retired with lucrative disability pensions.

Among them :

\* Four years ago, Deputy Highway Patrol Commissioner Ed Gomez won a \$39,000 workers' compensation stress claim against the state, a settlement that also entitled him to medical care for his "injuries" for the rest of his life. He then took a disability retirement that allows him to collect one-half of his \$106,968 annual pension tax-free. Two years later, the "stressed out" Gomez took a job as head of security for the San Francisco International Airport.

\* Deputy Chief Kevin Mince was close to retirement, too, when he won two workers' compensation claims against the state worth \$16,180. Like Gomez, Mince suffered from stress but he also suffered from hearing loss, headaches, skin cancer and an elbow injury. He took disability retirement that shielded half his \$109,259 pension from taxation and now teaches scuba diving in Hawaii.

\* CHP Commissioner D.O. "Spike" Helmick, who just this past June decried the high number of disability claims filed by CHP officers who were close to retirement, has filed five medical claims in the last five years himself - one for an injury suffered when he fell off his office chair. Then in July, Helmick applied for disability retirement.

Legislators expressed shock and dismay at what appears to be a scam that top CHP officers are running on the state's workers' compensation and disability retirement systems. Unfortunately, the Legislature is largely responsible.

Over the years, lawmakers have approved a host of laws that virtually invite abuse. For example, if a CHP officer develops any number of a wide range of ailments (including tuberculosis, cancer, HIV or even lower back pain) state law presumes that the ailment is work-related.

To discourage abuse, the governor needs to do what he promised: Appoint a new commissioner who will stop the abuse and pledge not to feather his own nest with dubious disability claims and thus set an example to the officers he commands. That may require looking beyond the good-old-boy-and-girl network that runs the CHP.

Also, the governor and the legislature together need to change the laws that invite abuse. If the law presumes that almost every ailment is job-related and rewards sufferers with richer pensions, it takes a paragon not to take advantage of the situation. Laws are never written with paragons in mind.

While The Bee's special report singled out the brass at the CHP, disability retirements are rising among rank-and-file Highway Patrol officers, as well as prison guards, local police and firefighters. Like CHP officers, these safety employees enjoy special presumptions regarding work-related ailments.

To cure chief's disease and protect taxpayers and the public purse, the governor and the Legislature will have to resist the influence of powerful police and firefighter unions who not only contribute large amounts of money to their political campaigns but supply valuable endorsements as well. Sadly for the public, neither the governor nor many legislators of either party have yet demonstrated the courage to do that.

#### **CHP chief vows probe -- The new commissioner will review the high rate of disability retirements.**

By John Hill and Dorothy Korber -- Bee Capitol Bureau - *(Published September 16, 2004)*

The new California Highway Patrol commissioner named by Gov. Arnold Schwarzenegger on Wednesday vowed to investigate the department's high rate of disability claims and medical pensions in light of a Bee investigation of widespread abuse.

"It is an issue for us, obviously," said Michael Brown, chief of CHP's Southern Division for the past four years. "It is a huge cost for us. ... That means fewer officers we can deploy on the road."

At a news conference announcing his appointment, Brown said he would launch a review of the practice next week and deliver a report to Sunne Wright McPeak, secretary of the Business, Transportation and Housing Agency, in 45 days.

Brown's predecessor, D.O. "Spike" Helmick, also said Wednesday that he had dropped his own application for a medical pension, which had been reported by The Bee earlier this month.

Helmick said he had always intended to take a normal retirement. He said he filed paperwork for a disability retirement as a financial hedge in case the state failed to cover medical costs agreed to in workers' compensation cases, settled in 2003.



Last week's Bee investigation documented a phenomenon known within the CHP as "Chief's Disease," in which top officials pursue disability claims as they near the end of their careers. It found that 80 percent of high-ranking officers sought workers' compensation settlements within two years of retirement.

Those claims often resulted in settlements for medical costs and lost competitiveness in the job market, and served as the basis of medical pensions, which shelter half of post-retirement income from taxes.

Some of these top officials then went on to demanding second careers seemingly at odds with the injuries documented in their claims to the state.

Brown, 48, said he found The Bee's reports disturbing.

"The tone and the tenor of the various articles that I read causes me great distress and, quite frankly, some embarrassment, if in fact the information is true and accurate," he said.

He said he volunteered to address the issue after discussing it with McPeak. The Schwarzenegger administration, in response to the stories, had said addressing the issues raised would be foremost among the new commissioner's tasks.

While calling it premature to make specific proposals, Brown said, "We're going to do the right thing."

The CHP has the highest rate of workers' compensation claims and medical pensions among large state departments. Together, these benefits cost California taxpayers \$75 million in the 2002-03 fiscal year.

Sen. Jackie Speier, D-Hillsborough, said she was pleased to hear that Brown recognized the department has a serious problem with disability claims.

"I've been around the state in the last two days, and the issue is radioactive," she said. "I've been in Sacramento, Los Angeles and Orange County - everyone is talking about it. I don't think anyone disputes the necessity of having medical disability retirements that are legitimate. But the public is incensed by what they see as a scam of sorts."

But Speier suggested that Brown might not be able to deal with the issue alone.

"Separate from what Commissioner Brown does as the new leader of the department is what the Legislature is going to do," she said. "I believe we will have hearings to explore the breadth of the use of medical disability retirements, both in the California Highway Patrol and elsewhere."

Speier described Helmick's withdrawal of his application as "a step in the right direction."

Helmick, who openly criticized the "Chief's Disease" phenomenon in interviews with The Bee last June, filed to seek one himself just weeks later. He had made five workers' compensation

claims in the past three years. In them, he said he injured his back falling off his office chair, hurt his knee riding a stationary bike, and was injured in traffic accidents and a scuffle with a suspect.

Helmick said he dropped his disability retirement application only after being reassured that he would get medical coverage under a 2003 workers' compensation settlement. That settlement included \$35,000 and future medical treatment for back and knee injuries, according to Helmick's file at the Workers' Compensation Appeals Board.

Helmick defended his decision to file in the first place, saying that after the spring overhaul of the workers' compensation system, some CHP officers who had won earlier settlements told him they could no longer get approval for some medical treatments.

"I wanted the issue of medical treatment resolved," he said.

Brown, the new commissioner, has worked his way through the ranks of the CHP in the course of a 27-year career. Since 2000, he has been the chief of the Los Angeles County division, overseeing 1,700 workers and a budget of \$118 million.

In addition to disability claims, issues ahead for Brown include the CHP's increasing role in guarding against terrorism and a recent government restructuring proposal to put the CHP into a new public safety department.

Brown has master's degrees in criminal justice and management and a bachelor's degree in criminal justice, according to a news release.

The appointment of Brown, a Republican, is subject to approval by the Senate. He was scheduled to take over as commissioner at 12:01 a.m. today, with a salary of \$131,412, McPeak said.

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#### **Public-be-damned attitude, badges seem to go hand in hand**

By Dan Walters -- Bee Columnist - *(Published September 17, 2004)*

California has two very large state agencies whose tens of thousands of employees wear badges and greenish uniforms and are empowered to carry weapons - the Highway Patrol and the Department of Corrections - and superficially, they would seem to have little in common other than their attire and armament.

Highway Patrol officers cruise the state's roadways, handing out tickets to errant motorists and investigating accidents, and provide security for top officials. Correctional officers keep more than 150,000 felons under control (with bullets, at times).

Curiously, both agencies appear to have contracted the same cynical virus, a public-be-damned, grab-all-you-can-get mentality that violates the spirit of law-abiding public service that we should expect of our men and women in uniform.

The rotten atmosphere in the Department of Corrections has been well documented in journalistic accounts, legislative hearings, federal-court proceedings and the report of a blue-ribbon commission appointed by Gov. Arnold Schwarzenegger.

Repeatedly, they have described a "code of silence" that prevents wrongdoing from being reported, a weak management structure that's subservient to the politically powerful California Correctional Peace Officers Association, threats against those who refuse to get along and go along, sweetheart labor contracts that cost taxpayers billions of dollars and provide \$100,000-plus annual incomes to ordinary line officers, and so forth.

A few days ago, Sacramento Bee reporters John Hill and Dorothy Korber laid out how huge numbers of Highway Patrol officers, including those in the CHP's highest ranks, routinely seek and gain hefty payments for supposedly job-related illnesses and injuries, and tax-sheltered disability retirements. The outgoing CHP commissioner, Spike Helmick, was sharply critical of the syndrome in one Bee interview, questioning why seemingly healthy officers suddenly develop job-related maladies as they near retirement - but then applied for those benefits himself, only to change his mind again after the Bee articles appeared.

The atmospheres in the Highway Patrol and the Department of Corrections are not confined to those agencies, unfortunately. They can be found in local police agencies as well, especially such large urban departments as the Los Angeles Police Department. And whether state or local, they stem from the same corrosive forces.

One is the widespread us-and-them mentality in law enforcement. Those in uniform, by the nature of their work, see the worst of humanity, whether it's a child molester, a feces-throwing prison inmate or a drunken driver who's wiped out a family. Thus, they often see themselves as a clan apart, performing work that ordinary citizens cannot comprehend. And those who work inside prisons unconsciously might adopt the twisted moral code of their fellow inhabitants of that world-unto-itself, valuing group (gang?) solidarity above anything.

Policeman-turned-author Joseph Wambaugh once observed that the greatest danger in being a cop was psychological impairment, not being shot. Divorce and alcohol abuse among cops and ex-cops are relatively common, researchers say, and their suicide rate is high.

The cloistered attitudes that develop from spending too much time dealing with miscreants are deepened by politicians' equally cynical relationship with the unions that represent badge-wearing civil servants. The unions trade their political endorsements, allowing endorsees to claim to be tough on crime, for tangibles such as special pension programs, union-friendly contracts, and lax management oversight, a practice that reached its zenith - or nadir - during the Gray Davis governorship.

And if anything, the mutual back-scratching with grasping politicians reinforces the rampant cynicism among the badge-wearers. If it's all just a dung heap, why not grab everything you can get and head for the retirement ranchette in Idaho, a state known as "Blue Heaven" in law-enforcement circles?

If - and when - we begin reconsidering some of the special benefits that politicians have extended to badge-carriers, maybe we should also address their widening cultural segregation from the larger society.

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### **CHP medical pension probe pledged**

By John Hill and Dorothy Korber -- Bee Staff Writers - *(Published September 24, 2004)*

The California Highway Patrol's new commissioner pledged Thursday to examine every medical pension awarded in the past four years and to revive a special unit that targets workers' compensation fraud.

Commissioner Michael Brown said he was taking the actions in response to stories in The Bee documenting widespread abuse of the system.

"We're starting at the top ... with the higher echelons of the department. Those are the first ones we'll look at, and we'll look at everyone else, too," Brown said in his first extended interview since Gov. Arnold Schwarzenegger appointed him to the CHP's top post last week.

The Bee's report earlier this month documented a practice of high-ranking officers claiming injuries on the verge of retirement - a phenomenon known within the CHP as "Chief's Disease."

Although Brown avoided using the phrase "Chief's Disease," he said his investigation of disability pension abuse would spare no one.

Brown outlined his own medical record with the CHP, beginning with an on-duty vehicle crash in 1978 that kept him off work for three months. Since then, he said, he has filed some minor work-related injury reports but has used only his own personal leave time and medical insurance for the incidents.

Injury claims can qualify officers for workers' compensation awards and often form the basis of medical pensions, which shield half of their post-retirement income from taxes. The Bee's investigation found that more than 80 percent of top CHP officers filed such claims within two years of retiring.

Some then went on to demanding second careers seemingly at odds with their injuries.

The investigation also found that the special CHP fraud unit that won nationwide praise in the early 1990s had become much less active in recent years, leading some officers to question whether it even still existed.

At a news conference last week announcing Brown's appointment, the new commissioner said he was troubled by The Bee's report and would launch an investigation, with a tentative report to be delivered to the Schwarzenegger administration in 45 days.

On Thursday, Brown expanded on that.

He promised to revive the fraud unit, shifting personnel from other assignments.

In its heyday, the unit deterred workers from filing questionable claims, freeing up money to put more officers on the highways, Brown said.

With the department facing annual costs of as much as \$75 million for workers' compensation and medical pensions, "any reduction we have in that particular arena is going to be better for us and better for the public," he said.

Brown said he has asked one of his chiefs to recommend how many investigators need to be assigned to the unit to review all pending cases, which number about 600.

Jane Naekel, an attorney who specializes in workers' compensation cases, said the fraud unit in the 1990s did dissuade officers from filing claims.

But she cautioned against casting so wide a net that workers with legitimate injuries are reluctant to file.

Jon Hamm, executive director of the California Association of Highway Patrolmen, said his union has represented a handful of officers who were wrongfully accused of workers' compensation fraud in the past.

But overall, Hamm said, the potential of a revived fraud unit raising awareness of false injury claims "outweighs any possible bad."

Brown commissioned the review of medical pensions dating to 2000, he said, to ensure that in every case the CHP complied with its internal policy and with state law.

"Any improprieties in those respects I want to correct and deal with," he said. "In addition, we are looking at our policies, procedures and practices to make sure that they are consistent with each other."

Brown acknowledged, however, that the CHP's ability to change the outcome of those cases may be limited. The California Public Employees' Retirement System is the ultimate judge of whether to grant disability retirements.

CalPERS officials have said that when they do pursue irregularities, their success rate of challenging disability claims is not high.

Revoking medical pensions could lead to formerly injured workers demanding reinstatement to the CHP, according to Naekel, the workers' comp attorney.

"They are entitled to come back to work," she said. "All of a sudden, you have people who had injuries out on the road."



Brown said the new fraud unit also will examine such reinstatements to ensure they are legitimate.

About his own appointment, which is subject to state Senate confirmation, Brown said he knows that some CHP critics believed an outsider should have been selected instead.

"I disagree with that," said the 27-year CHP veteran, who is a product of Sacramento schools and graduated from local colleges. "In this department, our reputation is built on a set of organizational values, and we set the bar pretty high. It was set by folks that predate me. If there are issues out there, we've always maintained we want to fix them ourselves."

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**Editorial: CHP promises reform -- Brown can't solve this problem alone**

*Published September 28, 2004*

Since it was first formed in 1929, the California Highway Patrol has enjoyed a reputation as the state's premier law enforcement agency. But allegations of widespread pension and workers' compensation abuse have tarnished that reputation.

In light of the disclosures, CHP Commissioner Michael Brown pledges to examine all CHP medical pensions awarded over the last four years. It's a reassuring step for the agency he heads, the public he serves and the officers he leads.

Gov. Arnold Schwarzenegger appointed the 27-year CHP veteran to the top job just days after The Sacramento Bee reported the burgeoning number of disability pensions within the agency. The Bee found that over the last four years, 55 of 65 of the patrol's highest-ranking officers filed dubious workers' compensation claims shortly before they retired and then applied for and received lucrative disability pensions. Despite the medical problems claimed, many of those retirees eventually wound up in high-stress, demanding jobs outside the agency.

Brown has said he will examine each of the disability retirements granted by the CHP since 2000, concentrating first on the highest-ranking retirees. That is appropriate, but Brown's actions alone will not stop abuse. The Legislature and the governor must act as well.

State pension law invites abuse. Under that law, a wide variety of ailments, from cancer and heart conditions to lower back pain, are presumed to be work-related if contracted by peace officers or firefighters. While The Bee found high rates of disability retirements among the California Highway Patrol officers, other police and firefighter agencies also have high numbers of disability retirements.

Given the presumptions in the law, CHP Commissioner Brown will have difficulty proving that the disability claims filed by his officers are false. The best way for the Legislature to cut down on dubious claims? Change the law.

# **Letters to the editor: CHP retirement claims**

*Published September 30, 2004*

Re " 'Chief's Disease' rife at CHP," Sept. 10: The article never mentions the process involved in getting a disability retirement approved. It is not the CHP that approves a disability retirement, but the Public Employee Retirement System (PERS), the State Compensation Insurance Fund (SCIF), and State appointed doctors. Disability retirements are rampant across all state agencies, not just the CHP.

I challenge The Bee to have a reporter get in and out of a patrol car wearing a 15-pound duty belt 20 to 50 times a shift for 10 to 15 years. Or go out in the desert and work in 115 to 120 degree heat for 10 years, being exposed to ground temperatures of 130 to 160 degrees while investigating traffic collisions. How about go out to the shoulder of a freeway and dodge a couple of cars traveling 65 mph day after day?

Finally, I would like to challenge The Bee to attend the endless "on duty" CHP officer funerals for nine years as the commissioner and then tell me what kind of stress has been accumulated over the years.

Disability retirements are deserved by more members than not on the CHP.

**- Diana Straling, Sacramento**

Re "CHP chief vows probe," Sept. 16: 80 percent of CHP officers file workers' comp claims close to retirement and most receive awards. They desire tax-free retirement and medical coverage guarantees for life -- even more valuable than the lump-sum workers' comp settlements they also receive.

Although workers' compensation laws were supposedly reformed, liberal awards continue to be granted. CHP officers and local public safety employees are no different from many others who file workers' comp claims. They just receive more "bang for the buck" due to tax code incentives. The probe will find California's workers' comp system still needs improvement as well as the federal tax code.

**- Marcia Fritz, Citrus Heights**

## **Inside the CHP**

My congratulations on the Sept. 15 editorial, "Curing chief's disease." Not only did The Bee properly identify those responsible for the "remedy." The editorial properly gives full credit to past legislators and governors for creating the problem.

The observation that it would take a "Paragon" to resist filing for disability retirement now authorized under existing workers' compensation statutes is right on! The people of California are fortunate, indeed, to have serving them the California Highway Patrol, a traffic law



enforcement agency with an international reputation for excellence, high morale and unequalled performance. The agency's fine reputation did not just happen. "The good-old-boy-and-girl network that runs the CHP," which you derogatorily identify, is responsible.

It may come as a surprise to The Bee, but Helmick is recognized as a "Paragon" by his peers in law enforcement. The high morale of the organization he led, and was part of for 35 years, is the envy of virtually every other law enforcement agency in the state. Helmick is a one-of-a-kind leader, and will be difficult, if not impossible, to replace.

**- Albert Le Bas, Cameron Park**

After seeing the embarrassing Sept. 14 Rex Babin editorial cartoon showing the CHP commissioner wearing a seatbelt while sitting at a desk, I felt compelled to write and voice a different opinion of Commissioner Helmick. It is a shame that the man who has devoted more than half his life to the state of California is being ridiculed by The Bee's cartoonist as he leaves his career behind.

I have been a patrol officer for more than 25 years and have seen commissioners come and go, but I have never worked for a better one. Helmick is a man of integrity and compassion. I have seen him at funerals for our fallen officers, and he feels the losses as if they were in his own family.

It is a shame that a long and distinguished career will end this way. He has given so much of himself to his profession, and those who know him both personally and professionally will miss what he brought to the CHP.

As for myself, and I'm sure thousands of uniformed and non-uniformed members of the CHP, I would like to say, "Thank you, Spike."

**- Chris Nicodemus, Chico**

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**Disability pension line is drawn -- Legislators, governor set out to cure Chief's Disease at CHP**

By Dorothy Korber and John Hill -- Bee Staff Writers - *(Published October 17, 2004)*

Hurdles to reducing the high number of disability retirements in the California Highway Patrol are many: Prosecutors won't prosecute. Legislators won't legislate. Fraud investigators won't investigate.

Faced with this quandary last spring, CHP Commissioner Spike Helmick threw up his hands in exasperation.

"I don't know how someone ever stops it except by drawing a big line in the sand," said Helmick, who stepped down in September.

Now some say the time for that big line may be here.

Prosecutors, legislators and investigators are aligning to try to change a system marred by an attitude that industrial disability pensions - designed to protect police and firefighters injured in the line of duty - are an entitlement.

There's no place where that attitude appears more problematic than in the Highway Patrol.

Seven out of 10 CHP retirees are on disability pensions - the highest rate in the state. A Bee investigation published last month found that among the patrol's top brass, more than 80 percent file a workers' compensation claim within two years of retiring, a practice known inside the department as Chief's Disease.

History shows CHP officers and other public safety workers are unlikely to easily relinquish the cash settlements and lifetime tax breaks that come with a workplace injury and the ensuing industrial disability pension.

Tightening up the loopholes may take political courage.

"If we blame everyone else, we'll never fix anything," said Tom Higgins, a deputy district attorney in Los Angeles County who doubled the workers' comp fraud prosecutions. "The finger-pointing has got to stop if we're going to change things."

Another person on the front lines of change is Santa Monica Police Chief James T. Butts Jr. Since 2001, his aggressive investigations have triggered a 55 percent drop in workers' compensation claims in the 214-officer department. As a result, disability retirements also dropped.

Joining Higgins and Butts are two legislators. State Sen. Jackie Speier, a Hillsborough Democrat, will hold a hearing in January to address the issue of industrial disability retirements, beginning with Chief's Disease.

Assemblyman Keith Richman, a Republican from Northridge, championed a bill last spring to end the financial incentive of double-dipping by retirees, who collect both a disability pension and workers' comp payouts. AB 2773 was opposed by the California Association of Highway Patrolmen and other unions.

It died in its first committee. Now Richman is contemplating a ballot initiative.

The person gouging the line the deepest is neither prosecutor nor legislator, but the Terminator himself: Gov. Arnold Schwarzenegger.

Currently no law specifically prevents lying to gain retirement benefits. The California Performance Review, a blueprint for improving state government commissioned by the governor, proposes making it illegal to lie to get a disability retirement from the California Public Employees' Retirement System, which oversees pensions for 1.4 million workers.

And, in response to The Bee's investigation of the CHP, the Governor's Office made it clear that reform of disability pension abuse would be the top priority for Spike Helmick's successor, Commissioner Michael Brown.

Within days of taking office on Sept. 15, Brown launched a review of every medical retirement in his department since 2000. He said a report on the findings - and recommendations to the governor and Legislature for reforms - will be completed this month.

Brown has revived the CHP's workers' compensation fraud investigative team. In its heyday during the early 1990s, the fraud unit pursued dozens of cases, turning 10 over to prosecutors.

Recently, however, the unit's caseload has dwindled to a trickle. Meanwhile, the CHP now spends nearly 10 percent of its \$669 million payroll on workplace injury claims.

Brown said he would not shy away from scrutiny.

"There is nothing to hide," he said in an interview shortly after his appointment. "I'm going to be forthright. We want to fix this. It's embarrassing."

Policing the police can be tough. Butts, the Santa Monica police chief, went outside his department and hired private investigators to track down fraudulent injury claims. So far, two officers have been convicted.

"We discovered that one officer was conducting a firearms training and self-defense course while he supposedly was totally disabled," Butts said. "Another had opened a restaurant. We videotaped them in activities that were supposedly proscribed by their disabilities."

One pleaded guilty to a misdemeanor, served nine months in jail and paid \$85,000 in restitution to the city of Santa Monica. The other pleaded guilty to a felony, is on probation, and paid back \$101,000.

The reaction in the department was dramatic, Butts said.

"You only have to make an example of one or two egregious offenders and the whole culture changes instantly," he said. "The arrests got everyone's attention. Our workers' comp claims dropped by over 55 percent, the time lost per claim dropped too, and there was a reduction in industrial disability retirements."

These retirements, known as IDRs for short, are available only to public safety workers hurt on the job. An IDR guarantees half pay for life, tax-free. Most CHP chiefs are past retirement age and therefore qualify for their regular pensions, with half of it shielded from taxes - often giving them more in retirement than they got when they came to work.

To get the convictions, Butts needed a prosecutor willing to file charges against police officers. He found Higgins of the Los Angeles County District Attorney's Office.

Higgins, a former Sacramento police officer, believes that fear of prosecution can be a powerful deterrent for ordinarily law-abiding people. He puts most perpetrators of disability fraud in that category.

"If you convince them - by publicity, posters and speeches - that there is a greater risk than they thought, and you come through with prosecutions, you can have a huge impact," Higgins said.

He cited his experience with the Metropolitan Transportation Authority in Los Angeles County, which faced a high incidence of workers' comp fraud among its 9,000 employees. Higgins filed charges in court - the first arrest was made in 2003 - but he also took his case to the workers.

"I arranged to hit 21 locations in eight days, meeting with groups of employees," he said. "The MTA is concerned about fraud, I told them. They are becoming much more aggressive in pursuing it. And the DA is going to be very aggressive.

"We started prosecuting cases, and I tried to get as much publicity for them as I could. Over the next nine months, new workers' comp claims in the MTA fell by 30 percent."

The MTA anti-fraud program is an ongoing success, according to a report issued last month by a county efficiency commission. Eighteen MTA employees have been fired, another powerful lesson for workers. And taxpayers saved \$8 million in reduced claims during 2002-03.

Prosecutors like Higgins need anti-fraud laws to enforce. What they face, instead, is a legal labyrinth. Laws to protect legitimately injured officers and firefighters can be used to justify rich disability pensions for others.

Under state law, a broad swath of maladies is presumed to be job-related when firefighters or police officers are afflicted. It's up to the employer to prove the ailments are not work-related. Among these presumptions are such common problems as heart trouble, blood-borne diseases like syphilis and lower back pain.

Some laws that get in the way of prosecutors are tailored specifically for the Highway Patrol.

Every sworn CHP officer - from the chiefs sitting at headquarters to the cop on patrol - must be able to perform 14 "critical tasks" demonstrating physical fitness. One task is dragging a 200-pound victim 50 feet.

The critical tasks may be overlooked until retirement looms. Then some officers cite their inability to perform the tasks as a basis for a workers' comp claim.

Another state law - this one in the vehicle code - prohibits the CHP from assigning disabled officers to light-duty jobs tailored to their abilities. There's no choice but retirement.

Even the absence of a law can fuel abuse.

Under the government code, CalPERS says, it can demand follow-up medical exams only for disability pensioners younger than 50. This effectively eliminates accountability for almost all the CHP chiefs taking medical pensions, including those who go on to demanding second careers that belie their disabilities.

The California Performance Review addresses one shortcoming: the lying issue. A decade ago, a similar bill died in the Assembly after unions and trial lawyers opposed it, saying other laws already prohibit filing false governmental documents.

Today, the same potent forces are expected to line up against any erosion of their access to disability claims. Assemblyman Richman, after watching the rapid demise this year of his bill, is not optimistic about the prospects for legislative change.

"I think that getting these types of changes through the Legislature is very difficult," he said. "Pension reform may ultimately require an initiative that goes directly to the taxpayers."

But state Sen. Speier, who chairs the Senate Select Committee on Government Oversight, thinks the Legislature is ready to take a new look.

"We've got to get real," Speier said. "We've got to restore that sense of integrity in determining disability. I believe, if people are going to act fraudulently against the state, that's unacceptable, and there should be a penalty and some consequences for them."

CHP Commissioner Brown says that is why he will propose his own new legislation and regulations when he releases his internal review later this month.

"It is frustrating for us as employers not to have control over portions of the system and to see that things take place," Brown said. "We are going to find out what we need to fix and we are going to fix it."

## **PROPOSALS TO CURE CHIEF'S DISEASE**

### **For the Highway Patrol**

- \* Vigorously investigate workers' comp fraud
- \* Prosecute lawbreakers
- \* Publicize zero tolerance of abuse
- \* Promote and reward physical fitness

### **For the Legislature**

- \* Cap disability pensions and limit double-dipping
- \* Make it a crime to lie to CalPERS about disabilities
- \* Exempt upper CHP ranks from physical requirements
- \* Revisit presumptions that many ailments are job-related